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TERRORISM AND SECURITY: THE ITALIAN EXPERIENCE

REPORT

OF THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
Washington, DC, July 11, 1984.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
Washington, DC.

DEAR MR. CHAIRMAN: On April 7, 1982, I wrote to Dr. Daniel J. Boorstin, the Librarian at the Library of Congress, requesting a complete and detailed study on Italian terrorism and security measures. This entailed a major revision and updating of two important Library of Congress reports prepared by Dr. Vittorfranco S. Pisano, i.e., "A Study of the Restructured Italian Intelligence and Security Services" (1978) and "Contemporary Italian Terrorism: Analysis and Countermeasures" (1979).

I requested Dr. Pisano's assistance in this work because I appreciate and greatly respect the professionalism, thoroughness, and objectivity that characterizes not only the above monographs, but also subsequent publications privately authored by Dr. Pisano, who, as you know, is an internationally recognized authority in this field.

Because of the important lessons to be learned from the Italian experience with terrorism, I requested that Dr. Pisano prepare a comprehensive update of his works. This update has now been completed with the enthusiastic assistance of Dr. Thomas J. Blumer, senior editor of the European Law Division, Law Library, who prepared the index.

It is with great pleasure that I transmit to you Dr. Pisano's report, entitled: "Terrorism and Security: The Italian Experience."

Sincerely,

JEREMIAH DENTON,
Chairman, Subcommittee on
Security and Terrorism.

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LIST OF ABBREVIATIONS

AD, Direct Action
AR, Revolutionary Action
AUTOP, Workers' Autonomy
BR, Red Brigades
CESIS, Intelligence and Security Executive Committee
Co.Co.ri., Communist Revolutionary Committees
CPM, Political Metropolitan Collective
DC, Christian Democratic Party
DIGOS, Division for General Investigations and Special Operations
DP, Proletarian Democracy
ETA, Basque Fatherland and Liberty
FCC, Communist Combat Formations
FdG, Youth Front
FGCI, Italian Communist Youth Federation
FLN, Algerian National Liberation Front
GAP, Partisan Action Groups
GIS, Special Intervention Groups
LC, Ongoing Struggle
MAR, Revolutionary Action Movement
MPRO, Proletarian Offensive Resistance Movement
MRP, Popular Revolutionary Movement
MSI, Italian Social Movement
NAP, Armed Proletarian Nuclei
NAR, Armed Revolutionary Nuclei
NATO, North Atlantic Treaty Organization
PCI, Italian Communist Party
PFLP, Popular Front for the Liberation of Palestine
PL, Front Line
PLO, Palestinian Liberation Organization
POTOP, Workers' Power
PR, Radical Party
PSd'A, Sardinian Action Party
PSDI, Italian Social Democratic Party
PSI, Italian Socialist Party
RAF, German Red Army Faction
SID, Defense Information Service
SIFAR, Armed Forces Information Service
SISDE, Service for Intelligence and Democratic Security
SISMI, Service for Military Intelligence and Security
UCC, Communist Combat Units
UCIGOS, Central Bureau for General Investigations and Special Operations
UIGOS, Office for General Investigations and Special Operations
UIL, Italian Union of Labor
USSR, Union of Socialist Soviet Republics

TERRORISM AND SECURITY: THE ITALIAN EXPERIENCE

INTRODUCTION

The manifest objective of this research effort is to examine the Italian terrorist phenomenon and the security measures developed in response at both the governmental and private levels during the period 1968–82.

These years correspond to the infancy, adolescence, maturity, and, in some cases, the demise of terrorist organizations of various ideologies that have declared war on Italian institutions and society.

Between 1968 and 1982, Italy was a major stage for terrorist practices and counterpractices. The Italian experience constitutes an instructive case study that transcends national borders and offers insights into the global terrorist scene and applicable countermeasures.

In the interest of providing a concise narration and analysis supported by an extensive data base, numerous appendices have been prepared. Hopefully, they will also serve as a useful tool for the English-speaking scholar, analyst, or law enforcement officer who wishes to examine the Italian terrorist phenomenon independently of the analysis submitted in the pages that follow.

As this work is being written in the early months of 1983, the author recalls the words of Judge Giancarlo Caselli who summarized the limitations and, indeed, the frustrations of terrorism research:

> Whatever can be said about terrorism is valid exclusively at the moment that it is being said. That is to say, it is subject to modifications on the basis of evidence, of new knowledge, which the judiciary, the police, or even the press might acquire in the future.

PART I. THE TERRORIST THREAT

A. NATURE AND INCIDENCE

Ideologically motivated terrorist violence perpetrated by clandestine formations has marred the Italian political landscape for over a decade. It is estimated that 14,613 acts of terrorist criminality were committed between 1968 and 1982 by highly structured organizations and by occasional groupings of individuals in the name of ideologies, or in the pursuit of goals, variously classifiable as Communist, neo-Fascist, anarchist, separatist, nationalistic/counterseparatist, ecological, feminist, internationalist, and transnational (see appendices III–XI).

The often thin ideological line of demarcation between these groups, which in some cases profess multiple ideologies, has in-

duced most observers to distinguish more simply, but somewhat less accurately, between terrorism of the left on one hand and terrorism on the right on the other.

The near totality of terrorist crimes perpetrated on Italian territory is the work of domestic terrorist formations, but there are also cases on record of terrorist operations conducted jointly by Italian nationals and aliens or by aliens alone.

Aggregate statistics on terrorist criminality generally reflect intensity as well as intermittent escalation trends. In point of fact (see appendix I), as opposed to less than 150 incidents recorded in 1968, several hundred per year took place during the period 1969–75, over 1,000 in 1976, and over 2,000 per year during the 1977–79 timeframe. A constant downward trend ranging from over 1,000 to several hundred incidents was recorded, instead, between 1980 and 1982.

While these figures constitute undeniable proof of the extensive terrorist presence in Italian society, the statistics can be deceiving if not properly considered. In the first place, notwithstanding the meritorious efforts displayed by the major law enforcement agencies—State Police and Carabinieri—in compiling them, aggregate statistics are admittedly not fully accurate because of the clandestine nature of the terrorist phenomenon, which often prevents the attribution of a precise paternity to criminal actions.[1] Secondly, as a rule, a comparatively small percentage of the annual statistics relates to significant terrorist acts such as murders, woundings, and abductions (compare appendices I and II). Moreover, even though statistics pertaining to specific categories of terrorist crimes may serve as a more reliable indicator of the threat posed by terrorist formations, allowance should be made for multiple deaths and injuries resulting from the detonation of explosive devices during a single terrorist incident. While understandably disquieting, this type of action does not reflect structural or operational sophistication on the part of a terrorist group.

Indirect evidence of the numerical strength of terrorist elements active in Italy is offered by the statistics compiled at various intervals by the Ministry of the Interior on imprisoned and wanted terrorists and/or subversives. On March 1, 1980, the prison population included 604 inmates of the left and 239 of the right. On the same date, 70 members of the left and 48 of the right were on the wanted list. Nearly 2 years later, on October 31, 1982, the prison population included 1,357 inmates of the left and 480 of the right. At the same time, 274 members of the left and 79 of the right were on the wanted list. These figures do not include unidentified terrorists and supportive extremists found among the general population.[2]

The specific objectives, structures, dynamics, operational environment, and points of contact of individual terrorist formations are ultimately determined or substantially conditioned by the ideological component to which they belong.

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[1] The compilation criteria have also changed through the years. For example, minor arson attempts that used to be reported by local police organs to central headquarters in the late 1960's were no longer reported in the late 1970's when ordinary terrorist actions had grown to be much more sophisticated.

[2] See La Repubblica, Dec. 4, 1982, p. 15 (Rome).

B. COMMUNIST COMPONENT

1. Characteristics

A plurality of assets accounts for making this component the most menacing of the entire terrorist spectrum. The Communist or leftist component has consistently displayed an unwaivering commitment to clear-cut principles of Marxist-Leninist ideology, despite internal debate, dissent, and schism over the methodology of its armed struggle. Moreover, from the very outset, it has developed viable clandestine structures and efficient operational techniques, while enjoying at the same time notable support from active and passive sympathizers. Traditionally, it is also the largest component from both the standpoint of numerical strength and the number of individual organizations present within its ranks. Not least, it has produced a major organization, known as the Red Brigades, endowed with an exceptional degree of resiliency in the face of cyclic setbacks and with the capability of absorbing less viable terrorist groups of kindred aspirations.

2. Ideology and objectives

All terrorist organizations of this ideological component basically aim at the same objective: the overthrow of the bourgeois, capitalist, imperialist state and the establishment of the dictatorship of the proletariat. Their ideology and goals are best expressed in the writings of the Red Brigades. The following are significant excerpts from their doctrinal tracts:

> The State, even in the most democratic republic, is only an oppressive machine used by one class against another.
>
> In the capitalistic social formations, the State, its juristic ideology, and its law are nothing other than instruments through which the bourgeoisie exercises its dictatorship over the proletariat.
>
> The only language that the servants of imperialism have demonstrated to understand is the language of arms and it is in this language that the proletariat is beginning to speak.
>
> No objective, no matter how militarily protected, is unattackable by a guerrilla force.
>
> Proletarian power must be affirmed even though the concretization of its own justice, through the capability of *trying, passing judgment on, convicting* the enemies of the proletariat.[3]
>
> To construct the system of proletarian power means to fight against the power of the opposing class.[4]

Doctrinal belief in the class struggle and advocacy of the armed struggle are more dynamically and synthetically propagandized in the following exhortations addressed to the proletariat in Red Brigades' documents and communiques:

—Bring the attack to the imperialist state of the multinationals;

[3] Passages extracted from a document titled "Red Brigades, No. 6, March 1979, Spring Campaign: Seizure, Trial, Execution of Christian Democratic President Aldo Moro."

[4] Passage extracted from a document titled "Red Brigades, No. 7, July 1979, From the Field in Asinara."

—Unify the proletarian movement of offensive resistance in the combatant Communist party;

—Create, strengthen, expand the mass organisms of the revolutionary proletarian power,[5] and

—Transform the objectives of the imperialist bourgeoisie into anti-imperialist civil war.[6]

3. Factors conducive to growth

In addition to possessing a firmer doctrinal base and a more efficient operational structure, the Communist component of the Italian terrorist milieu has drawn more vitality than any of its counterparts from a general state of malaise, conducive to destabilization, that is attributable to insufficient social services, political contradictions, governmental instability, unenlightened media practices, and the teachings of the Italian Communist Party—not to be confused with the combatant Communist party the Red Brigades and sister groups wish to construct. Each of these five principal factors can be briefly summarized as follows:

(1) By 1960, Italy had experienced the so-called economic miracle, entailing a rapid passage from post-war reconstruction to an advanced industrial posture. Italy is now the seventh most industrialized nation. Regrettably, this momentous industrial expansion, which triggered mass migrations from south to north and from rural to urban areas, was not accompanied by a parallel growth in social structures. The metropolitan centers were ultimately unable to provide adequately for the increased population in terms of housing, schools, hospitals, and other social services. These unsatisfactory material conditions have facilitated subversive propaganda and recruitment.

(2) Not less damaging from a psychological perspective are the contradictions inherent to the deep-rooted practices of Italy's political parties. In the absence of an absolute majority party in the Parliament, parties having discordant platforms coalesce at rhapsodic intervals, after political barter and ideological compromise, in order to form the government (executive cabinet), which, in accordance with the Republican Constitution of 1948, must enjoy the support of Parliament to stay in office. The lack of homogeneity in the makeup of these coalitions frequently constitutes a hindrance to good and efficient government, while it conversely nurtures a spoils system, based on graft and corruption, to the benefit of the coalition partners. Besides creating a state of malaise among the population at large, this situation increases the credibility of the terrorist left in the eyes of youthful extremists and idealists.

(3) The instability of the Italian Government is made manifest by the succession of 39 executive cabinets since the Constitution went into effect on January 1, 1948. Governmental instability, coupled with the political contradictions briefly outlined above, has in turn produced governmental weakness and permissiveness.

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[5] Those exhortations are recurrent in virtually all Red Brigades documents including resolutions and communiques.

[6] Passage extracted from a document titled "For Communism, Red Brigades, For the Construction of the Combatant Communist Party, Resolution of the Strategic Directorate, December 1981."

A macroscopic reflection of this state of affairs is the governmental stance vis-a-vis durable trends of unruliness and violence in expressing socio-economic demands inaugurated by student and organized-labor unrest in the late 1960's. The governmental response prevalent throughout most of the following decade consisted of policies and, indeed legislation that resulted in the downgrading of the educational system, the slanting of labor relations too heavily in favor of employees and the labor unions to the deteriment of the national economy, the weakening of criminal laws and procedures in favor of politicized and nonpoliticized social deviants, the reduction of military and police efficiency, and the virtual emasculation of the intelligence services. The lowering of academic standards turned out to be particularly harmful, because it has produced a larger number of graduates whose increased post-graduation expectations cannot find a receptive job market.[7]

This climate of permissiveness has likewise contributed to emboldening the aspirations and behavior of subversive elements of the left in particular but also of other ideological persuasions. When remedial legislation and policies were resorted to in the late 1970's (as discussed in part II), much of the damage had by then already been done.[8]

(4) Except for the terrorists' own journals and the press organs of sympathetic extraparliamentary organizations, the media cannot be accused of having been supportive at any time of terrorist tactics or goals. Yet, a number of unenlightened media practices have contributed to the public's disorientation, while particulary favoring the terrorist left.

In the first place, an inordinate amount of daily coverage has been devoted to the terrorist phenomenon, which, in the ultimate analysis, produces fewer casualties than careless and wreckless driving. In this sense the terrorist formations, especially the intensively dynamic ones of the left (see appendix XII), have found in the media a much valued sounding board for their ideology and actions, as well as a channel for granting exclusive interviews.

Secondly, as the terrorists ranks of the left were growing in strength and boldness even professionally respected dailies, such as Corriere della Sera of Milan and La Stampa of Turin, and major weeklies, such as L'Espresso of Rome and Panorama of Milan, cast doubt on the Marxist-Leninist matrix of specific crimes, whose perpetrators have since been identified as terrorists of Communist inspiration. According to media perceptions, instead, responsibility rested with the right disguised as the left. Two instructive examples of this media attitude relate to the abduction of Assistant State Attorney Mario Sossi in Genoa and the murder of two Italian

---

[7] For statistics on student enrollment, diplomas, and degrees, see Il Settimanale, Feb. 3, 1981, p. 33 (Rome); and La Repubblica, Feb. 8, 1981, p. 15 (Rome).

[8] The following works offer a detailed description and analysis of the Italian sociopoliticoeconomic scene since the conclusion of World War II: D. Bartoli, "Gli italiani nella terra di nessuno," Milano, Mondadori, 1976; D. Bartoli, "Gli anni della tempesta," Milano, Editoriale Nuova, 1981; L. Preti, "Il compromesso storico," Milano, Rusconi, 1975; G. C. Re, "Fine di una politica," Bologna, Cappelli, 1971; and A. Ronchey, "Accadde, in Italia 1968-1977," Milano, Garzanti, 1977.

Social Movement (MSI) activists in Padua, perpetrated in each instance by the Red Brigades in 1974 (see appendix XII).[9]

Lastly, scoop-oriented journalists have not hesitated to print documents pertinent to ongoing police/judicial investigations into terrorist crimes before their official public release, thus jeopardizing the investigations themselves. The most notorious incident of this nature is the publication of long excerpts from the interrogation record of repentant red brigadist Patrizio Peci in May of 1980 by Il Messaggero, a Rome daily.

(5) Since the early 1970's the official Italian Communist Party (PCI) has considerably toned down its revolutionary rhetoric in order to project an image of moderation to achieve its political ends through a broad electoral base. However, its political ends remain Communist as that party consistently refutes any equation with social domocracy. While PCI electoral strategies are of limited interest to the study at hand, its ideological and operational precedents are of significance.

The doctrine, objectives and parlance of the terrorist left are reminiscent of the PCI's more traditional hardline. Rossana Rossanda, formerly of the PCI and now of the Manifesto, in commenting on the proclamations of the Red Brigades picturesquely stated: "It's like leafing through a family album." [10] Likewise, the Red Brigades have displayed a deep affinity for democratic centralism, an organizational principle democratic in name only that the PCI itself still refuses to discard.[11] Moreover, as the major opposition party and the foremost anti-system element within the system for over three decades, it has provided not only ideological nourishment but also instructive operational precedents to the various terrorist organizations of the left.

From the standpoint of targets and tactics, various parallels may be drawn between the Red Brigades, Front Line, and other leftist terriorist bands of the past decade, on one hand, and the PCI of the 1940's, 1950's, and 1960's on the other.

In the mid-1940's, Communist partisans who had expected the War of Liberation to usher in the "Italian Soviet Republic" stored away sizable caches of weapons for future use and organized paramilitary units. One of these, the Red Strike Force (Volante Rossa), remained active in various parts of Italy at least well into 1949. Its activities included abductions, woundings, and murders of political adversaries as well as lesser intimidatory techniques. In 1948, during the 6th PCI Congress, the Red Strike Force was brazenly used by the Party to keep order and to escort the Soviet delegates and French Communist Party leader Maurice Thorez. Other PCI card-carrying members were responsible for uprisings and raids in Ragusa and Schio (53 murders in Schio alone) in 1945, in other northern towns the following year, and through much of the rest of Italy after the abortive attempt on the life of PCI leader Palmiro Togliatti by one Antonio Pallante on July 4, 1948.

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[9] For an analysis of pertinent media practices corroborated by extensive quotations, see Il Giornale Nuovo, Jan. 23, 1980, p. 7 (Milan).

[10] Quoted from Il Manifesto by Il Giornale Nuovo, Apr. 6, 1978, p. 3 (Milan).

[11] PCI pronouncements on democratic centralism periodically issued from 1956 to 1983 attest to that party's continuing commitment to such an organizational principle. Significant excerpts thereof appear in Panorama, Feb. 21, 1983, p. 21 (Milan).

The following evening, Luigi Longo, who succeeded Togliatti as secretary-general and later became president of the party (a position he held until his death in 1980) stated: "Let's see how things go. If the protest wave increases, we will allow it to increase. If it decreases, we will block it." Next day, Longo, backed by Pietro Secchia, another hard liner, made the following statement before the Party's central committee: "The insurgent forces are concentrated in the large cities of the North. . . . The rank-and-file are saying, 'We have the factories in our hands: we have the cities in our hands.' But let the comrades reflect: for the time being neither the police nor the army has intervened. If they do, they have cannon and tanks against which it is impossible to resist."[12] Pragmatism ultimately prevailed over revolutionary fervor and incipient insurgency.

A decade later, in the summer of 1960, the government of Prime Minister Fernando Tambroni, who had accepted the parliamentary support of the rightist Italian Social Movement (MSI), was overturned because of Communist street violence. Particularly affected by the Communist-inspired disorders were the cities of Genoa, Licata, Rome, Reggio Emilia, Palermo, and Catania. Eight casualties and several hundred injuries occurred during the clashes with the police.[13]

While the relationship between today's revolutionaries of the left and the PCI is not one of amity, it is difficult to challenge their joint inheritance right to the "family album" spoken of by Rossana Rossanda.[14]

4. Structural and operational patterns

The structure and operations of the Italian terrorist groups of Communist inspiration are largely patterned after those of the Algerian National Liberation Front and of various South American urban guerrilla groups. In fact, the principles set forth in Carlos Marighella's "Minimanual of the Urban Guerrilla" have been skillfully adapted to the Italian scene.

Five major patterns emerge from the study of Italian terrorist formations that have been part of the Communist ideological component since 1970. Not all five of them have always been practiced simultaneously, nor is any of them necessarily being fully pursued at this writing. However, apart from historical considerations, knowledge of them is most valuable because of evolutionary as well as involuntary trends in terrorist endeavors.

(1) Rigid clandestinity accompanied by selective and systematic actions.—This pattern characterizes the history of the Red Brigades (Brigate Rosse, BR), the only terrorist organization of the left in continuous existence since 1970, and, to a lesser degree, the practices of the Armed Proletarian Nuclei (Nuclei Armati Prole-

[12] Both statements are reported in W. Tobagi, "La rivoluzione impossibile," Il Saggiatore, Firenze, 1978, pp. 12-13. Walter Tobagi himself was murdered by terrorist elements of the left on May 28, 1980, in Milan.

[13] For a summary of the incidents, accompanied by photographs, see Il Settimanale, July 27, 1980, pp. 16-19 (Rome); and L'Espresso, June 29, 1980, pp. 32-40 (Rome). According to the latter, in Genoa alone 162 policemen and 40 rioters were wounded on June 30, 1960.

[14] In addition to the publications cited in supra notes 12 and 13; the following also address PCI involvement in acts of political violence: A. Ronchey, "Libro bianco sull'ultima generazione," Garzanti, Milano, 1978; and Soccorso Rosso, "Brigate Rosse," Feltrinelli, Milano, 1976.

tari, NAP), a considerably smaller group active between 1974 and 1977, but subsequently absorbed by the BR.

In keeping with the rigidly clandestine organizational concepts used by organizations of the left, the BR adoped a "pyramidal structure with closed compartments, each headed by a person who acts as a filter and assures access to a higher compartment."[15] At this writing, after one year of setbacks of unprecedented magnitude, the organizational structure of the BR is not believed to be intact. In any case, whatever is left of that terrorist formation, whose history is one of resiliency in the face of periodic setbacks, is likely to be influenced by its time-tested model.

At the top of the above-cited pyramidal structure is the strategic directorate, presumably but not provenly, the highest authority within the BR hierarchy. The strategic directorate, which can be regarded as a revolutionary council, decides upon objectives and campaigns. Its functions are therefore politico-military in nature. Since it does not meet in permanent session, but convenes from time to time, the execution of its resolutions is delegated to an executive committee.

The numerical composition and the identity of all members of these two organs, one or both of which may be out of commission at this time of presumable reorganizational efforts by the surviving elements of the BR, require further investigation. According to repentant red brigadist Patrizio Peci, who was captured in February of 1980, the strategic directorate consisted until 1979 of 10 members.[16] With respect to the executive committee, Peci has indicated that its composition varies from four to five members, but this rule is not rigid.[17] The partial list of strategic directorate and executive committee members provided to date by Peci and other repentant terrorists is that of BR militants allegedly known to them directly or from other sources. Consequently, from these confessions no behind-the-scenes principals or figures have emerged.

The immediate lower layer of the BR structure consists of several columns whose responsibilities mostly entail operations and intelligence collection. Under optimal conditions, individual columns are assigned municipal or regional spheres of action. The BR refer to a city as a pole. Through the years, indentified columns include those of Milan, Turin, Genoa, the Veneto region, Rome, Naples, and, at least at the incipient level, the Sardinian region. In the regions of Tuscany and Marche, BR committees are known to have operated as appendages of columns, but with functions analogous to those performed by the columns. The last unclassified semiannual intelligence report presented by the Prime Minister to the Parliament on November 27, 1982, indicated that the Rome, Milan, Turin, and Naples columns are still potentially dangerous.[18]

At the lowest pyramidal level operate brigades having, in some cases subordinate cells. The brigades are directed, managed and su-

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[15] L'Espresso May 21, 1978, pp. 18-19 (Rome).
[16] Id Feb 1, 1981, p 13 (Rome).
[17] Il Messaggero, May 4, 1980, pp. 22-23 (Rome).
[18] Atti Parlamentari, VIII Legislatura, Camera dei Deputati, "Relazione sulla politica informative e della sicurezza," Semestre 23 maggio—22 novembre 1982, presentata il 27 novembre 1982, p. 8.

pervised by the headquarters of the column to which they belong. Each column is composed of two or more brigades.

In addition to this operations-oriented structure, the BR clandestine organization possesses a number of fronts whose mission is somewhat less dynamic, as their activities entail research, certain types of intelligence collection, propaganda, and logistics. A substantial part of their input originates from the columns and the brigades. The fronts include the mass front, the logistical front, and the triple front. The last of these is specifically concerned with intelligence collection/processing regarding the judiciary, the police, and the labor unions.

The actual militants of the BR can be classified as either regulars or irregulars. Both are part of the clandestine structure, but whereas the former lead a totally clandestine life, the latter are only part-timers in the organization and consequently maintain a close to normal life style. According to Antonio Savasta, another repentant red brigadist captured in January of 1982, irregulars are to be found in the strategic directorate as well.[19]

A more direct perception of the BR structure can be acquired by focusing on the Rome column, one of the most important BR units and one that is still considered operational despite the setbacks suffered by the BR since the beginning of 1982. At least until recently, the Rome column consisted of five brigades designated as Rome North Side, Rome South Side, Ostia, Hospitaliers, and University. The names given to these brigades are indicative of operational spheres of action assigned in relation to territory or to specific institutions. Individual brigade strength ranged from a minimum of two or three members to a maximum of five or six. Besides these organic fullfledged operational units, the Rome column maintained points of contact consisting of at least one irregular in each of a number of other institutions including the local railroad, telephone, labor placement, and school administrations, and Alitalia (Italian Air Lines). The point of contact can expand into a brigade, if the situation is favorable or is a remnant of an inactivated brigade.

Structural clandestinity is inevitably accompanied by a body of security norms that address liaison between members of the organization in special detail. Within the BR, the unflexible application of these norms would require that brigade members be familiar only with members of their own brigade; brigade leaders be familiar only with their column leader; and column leaders be familiar only with one or more representatives of the strategic directorate or of the executive committee. However, since the more complex operations frequently require the combined assets of two or more brigades, of an entire column or even two or more columns, the rigidity of the above cited norms is modified from time to time. This security mitigation is also necessary to allow the fronts to operate efficiently, since their membership is drawn from column headquarters so that they can assess the situation as well as requirements throughout the national territory.

To ensure an acceptable degree of security in all of these cases, the BR meticulously regulate behavior pertaining to movement

[19] Il Tempo, Apr. 29, 1982, p. 9 (Rome).

and rendezvous. In metropolitan areas, the regular BR militant is cautioned to avoid the historical center, especially during periods of intense police surveillance, and to move on foot or by public conveyance. Meetings with other militants are to take place in areas of noticable pedestrian and vehicular traffic, preferably in the less central sections of the city. Bus stops are considered desirable specific meeting points within the above-described environment.

Meetings between militants, regardless of their purpose, entail two procedures known as ordinary and strategic. Ordinary procedure meetings are scheduled in relation to operational/logistical requirements but must avoid set patterns as to the day of the week or month, time, and place. If one of the two militants fails to appear, the appointment is automatically postponed to 1 hour later. If the rendezvous fails a second time, the meeting is once again automatically set for the following day at the same time and place. In the event of a repeated failure, no further attempt is made under the ordinary procedure. At this point, the strategic procedure goes into effect. The strategic meeting is set from the very beginning of the relationship between the two militants. The day of the week or month, time, and place of the appointment subject to strategic procedure is not open to change and is purely eventual, i.e., it takes place only in case the ordinary procedure cannot be followed. To avoid organizational loss of contact, an encoded record of all strategic-procedure appointments is kept at both column headquarters and at higher levels.

Security norms also govern operational and logistical bases, the number of which varies from column to column. The more important bases must be guarded by two regulars. Bases are either purchased or rented by an unsuspected militant with a clean police record, who theoretically performs no other function within the organization. For further security enhancement, the location of bases is periodically changed. Besides their own base, all regulars know the address of an additional one that is to serve as a back-up facility in cases of emergency.

The above-described rigidly clandestine structure is accompanied by selective and systematic terrorist actions. Human targets are not picked at random but are selectively chosen because of the institution they represent or because of their own role within the system the BR wish to destroy. Equally representative or symbolic are the material targets of the BR. The fact that responsibility is most often claimed after a terrorist attack does not in any way alter the clandestine nature of the organization, since the BR are clandestine in their structure and not in their aims, which they actively seek to publicize directly through their own proclamations and indirectly through media coverage. With respect to operational security, the BR are particularly careful in claiming responsibility for their actions, especially the more clamor-inducing ones such as murders, woundings, and abductions. Paternity leaflets are either immediately dropped off by the unit that perpetrated the criminal act or delivered a few days after the event by irregulars unconnected with the operation and unfamiliar with those responsible for it. These procedures are intended to prevent compromising the individual identity of the perpetrators.

(2) Simultaneous political action and armed struggle.—This pattern characterizes Front Line (Prima Linea, PL) and its satellite formations. It should be premised, however, that the ideology and political objectives as well as the human and material targets of PL do not substantially differ from those of the BR. PL came into being in 1976 in the footsteps of the BR, at the same time that numerous minor formations were making their appearance on the terrorist scene. By 1980 PL was second to the BR alone in the menace it posed (see appendix XII). Thereafter, following successful police operations, part of its residual assets were absorbed by the BR, while other remnants have attempted to resurface under their original banner or other names. Most recently the name Communist Combatant Nuclei was used by a commando group that liberated PL prison inmates in Rovigo (see appendix XIII).

Two primary differences in revolutionary strategy account for the distinction between PL and the BR. The latter believe in the determinant and exclusive role of the armed vanguards and are consequently more militarily structured in the Marxist-Leninist sense. PL, on the other hand, has consistently demonstrated its belief in the armed struggle, but it has also displayed a marked propensity for political action. Therefore, its members have traditionally combined, where possible, political militancy at the nonclandestine level with clandestinely perpetrated terrorist crimes.

The second difference stems from the first. The BR have generally condemned spontaneity as damaging to the revolutionary cause, whose vanguard they perceive themselves to be. PL, on the other hand, has adopted a comparatively flexible operational structure that leaves room for individual decision-making by its organic units and satellites in the belief that situational objectives (goals and targets immediately perceivable as significant by the various strata of the proletariat in specific or varying circumstances) can likewise be best achieved through grass-root initiatives.

For these reasons, PL has been defined as a "federation of connected groups lacking the rigid military organization of the BR." [20]

It is also worth noting how Marco Donat Cattin, a repentant PL member distinguishes his own terrorist band from the BR:

> The BR are substantially a Marxist-Leninist organization. PL, instead, is linked from its birth to salaried-workers' themes and is more oriented toward the achievement of immediate objectives. PL does not consider itself a party, but a service structure, an armed group that carries out actions in reference to the contingent situation.[21]

Given the federative nature of PL, uncertainties still subsist even with respect to its heyday organization. As one can best reconstruct the organization, it included a centralized political structure consisting of various fronts with functions pertaining to intelligence, liaison, recruitment, and logistics and a territorial structure consisting of fire groups with subordinate squads and patrols. These structures were loosely connected by some sort of a central committee.

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[20] Id. Dec. 12, 1979, p. 16 (Rome).
[21] La Repubblica, Nov. 3, 1982, p. 15 (Rome).

From a functional standpoint, the fire groups are analogous to the columns of the BR. Known fire groups include those that operated in Turin, Milan, Florence, and Rome. Fire groups headquarters assigned targeting tasks to subordinate or connected squads which had their own internal organization, broad operational autonomy, and an individual name that modified the word squad (see appendix III). Patrols were practically subsquads that shared the nature of the squads except for the fact that their operations were intended to be more intimidatory than violent and their actions were less systematic. Similarly, patrols frequently possessed their own denominations (see appendix III).

Again, because of the aggregative structure of PL and its tolerance for revolutionary spontaneity, responsibility for actions perpetrated by PL has been claimed either under its own name, or that of its subordinate or satellite squads and patrols, or even a combination of these units.

The aforecited semiannual intelligence report states that a number of affiliations of PL still maintain a certain degree of efficiency.[22] It can therefore be presumed that squads, patrols, and similar units once connected to PL, are now operating without their former umbrella link.

(3) Spontaneous and sporadic actions.—Terrorist crimes that fall within this pattern are among the most complex to analyze with respect to their true objectives and paternity. In many cases, they are perpetrated by previously unknown groups which, after making a brief appearance on the scene, are not heard from again. Their operations most often, but not always (see appendix XIII), entail unsophisticated acts of terrorist violence such as arson or bombings of property. Many of the groups listed in appendix III are examples of this type of organization.

Several actions that appear to be part of this pattern in reality constitute secondary missions of the practioners of the previous two patterns, including security (e.g., when a new unit is being instituted in a different area of the country but is not yet fully organized or sufficiently supported by nonterrorist elements of sympathetic political fringes), propaganda (e.g., the spreading of the armed struggle), and training or testing of new recruits.

A common tendency is to attribute most actions falling within this pattern to presumable affiliations or satellites of PL, especially if the words "squads" or "patrols" appear in the name of the formation that claims responsibility for a specific action. But such an assumption, while based on a reasonable degree of probability, is not always correct. It should be noted that within what the BR call the Proletarian Offensive Resistance Movement (Movimento Proletario di Resistenza Offensiva, MPRO), which is in essence an outer ring or reservoir for BR recruitment or delegation of specific operations, there are elements which initiate, without mandate, actions under different names to establish themselves as qualified candidates for fullfledged BR membership. Moreover, as it will be discussed in connection with the examination of the fifth pattern, a number of these seemingly spontaneous and sporadic actions is perpetrated by variously named elements of the Automomy.

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[22] Supra note 18, p. 9.

Appendix XIII lists significant terrorist actions perpetrated by minor subversive formations of Communist inspiration. These actions, as opposed to the less significant ones, whose paternity is indeed difficult to establish, are likely in most instances to be the work of groups connected to, or commissioned by, Front Line, the Autonomy, or the Red Brigades, in that order. Notable exceptions to this presumption are the October XXII Circle and, probably, the Communist Combat Units.

(4) Interorganizational liaison/support and/or combined operations.—In the quagmire of terrorist and subversive groups, the relationship among them frequently eludes classification. However, certain aspects of this pattern are relatively simple to analyze. Residual assets (manpower, bases, documents, weapons, etc.) of no longer viable groups have been absorbed by more dynamic ones throughout the history of the terrorist wave discussed in this study. At the same time, there have been cases of militants passing from one terrorist group to another.

The Partisan Action Groups (Gruppi di Azione Partigiana, GAP) was a small organization which existed in northern Italy from the late 1960's to 1972. It was financed by the millionaire, publisher and Communist revolutionary ideologist Giangiacomo Feltrinelli as part of his plan to conduct partisan-style field-and-mountain warfare to preempt an alleged impending Fascist takeover of the government. Along with other sundry elements, GAP absorbed the October XXII Circle (Circolo XXII Ottobre), another small group in existence in northern Italy from 1969 to 1971, made up of Communist hard-liners and former partisans who were no longer satisfied with the official Italian Communist Party. Following Feltrinelli's accidental death in 1972, as he was attaching explosives to an electric power pylon, the GAP was in turn absorbed by the BR, which subsequently took over the residual assets of the Armed Proletarian Nuclei (Nuclei Armati Proletari, NAP), a terrorist group with southern Italian roots active from 1974 to 1977 and bent on serving as the operational revolutionary link between prison inmates and the proletarians on the outside, as well as a portion of the remaining assets of PL.

Furthermore, the birth of individual BR columns has entailed, at least in part, the absorption of local subversive groups. For example, the Rome column, founded in the second half of the 1970's, initially acquired the assets of the Communist Armed Formations (Formazioni Armate Comuniste, FAC, a splinter of the now defunct extraparliamentary party Workers' Power) and later on elements of the Communist Combat Units (Unita Combattenti Comuniste, UCC, another now presumably neutralized offshoot of the extraparliamentary left with a propensity for both political and common crime as well as links with organized crime groups in the region of Calabria).

In addition to absorption cases, such as the above-described ones, there are several instances of terrorists of the left leaving one group to join another. The most notorious case is that of Corrado Alunni, a member of the historic nucleus (an original member) of the BR, who moved on to PL.

The foregoing reflects, as a minimum, the existence of habitual contacts among terrorist groups of Communist inspiration. More-

over, evidence orginating from several sources, including police investigations, court records, and terrorism studies, is indicative of various forms of ideological dialog and operational collaboration among Communist-inspired organizations.

In 1971, the BR and the GAP contemplated a merger, but this plan was discarded because of the fundamental difference between the BR's urban-warfare orientation and the GAP's preference for more classical partisan operations. In 1976 a series of joint BR-NAP actions was launched against police barracks and vehicles in Pisa, Rho, Genoa, Turin, Rome, Naples, and Florence. In 1978, while the late Aldo Moro, then Christian Democratic Party President and former Prime Minister, was a captive of the BR, PL inquired as to the feasibility of submitting questions to the elder statesman. Even more numerous are those cases involving the joint perpetration of lesser terrorist crimes by minor formations that proliferated particularly in the period 1977–80.

In connection with this pattern, it is worth noting that the terrorist organizations of the left exercise varying degrees of influence on one another. The GAP and the October XXII Circle included common criminals in their ranks. The NAP's aim was to politicize the prisons and their inmates. After these three organizations were totally crippled by successful law enforcement operations, the BR not only added to their own objectives the specific mission of the NAP, but also began to recruit politicized common criminals. The NAP, PL, and all the minor groups emulated the BR's ambush and/or hit-and-run targeting techniques. One NAP kidnaping, that of Supreme Court Judge Di Gennaro (see appendix XII), was modeled after the BR's political abduction pattern of the time. Mass leg shooting, inaugurated by PL on December 11, 1979, was quickly paralleled by the BR on April 1, 1980 (see appendix XII). Many more examples could be cited.

(*5*) *Auxiliary support.*—This last pattern principally entails logistical and service activities in support of terrorist organizations, but does not exclude the direct perpetration of typical terrorist crimes, which is indicative of an operational orientation as well.

Before examining this pattern, it is beneficial to expand briefly upon what has already been stated regarding the organic logistical and service structures of the above-discussed terrorist organizations.

All terrorist groups of the left, and in particular the better established ones, aim at the highest possible level of self-sufficiency. Much of their funds are raised through armed robberies of banks, payrolls, and jewelry stores and, in some cases, kidnaping for ransom. For example, the proceeds obtained by the NAP from the Moccia abduction in 1974 were used to extend their zone of operations to the north of Naples. The proceeds obtained by the BR from the Costa kidnaping for ransom in 1977 were used to finance the political abduction of Aldo Moro the following year (see appendix XII). Material, including weapons, motor vehicles, and other equipment, is most frequently stolen either by stealth or clamorous actions. For example, between March 30, 1980, and November 20, 1982, at least six known raids were disjointly conducted by the BR and by PL against army and air force installations and trucks to obtain weapons. Those attacks that caused deaths and injuries are

listed in appendix XII. Files and other information of intelligence use are likewise often acquired through raids on offices or private dwellings. Other intelligence gathering functions are accomplished by strategically planted irregulars or points of contact.

Logistical requisitioning and intelligence collection are conducted by the operational units or elements of the terrorist organizations. But for purposes of logistical or intelligence planning and distribution, other echelons, such as the logistical front and the mass front of the BR are utilized.

Whenever goods or services cannot be acquired by support structures from within the organization, in accordance with the above-outlined methodology, the organizations rely on three other procedures: overt purchase, if possible; organized common crime channels, against compensation; or auxiliary support.

Auxiliary support is provided by a number of extremist organizations and groups of the extraparliamentary left that regard themselves as part of the Movement or of the Autonomy. As the privileged interlocutors of the terrorist organizations, these outfits not only constitute a terrorist recruitment pool, but also render a variety of services ranging from logistics to propaganda, from cover to intelligence, and from medical to legal assistance.

Of particular significance within this context is the extraparliamentary organization Workers' Autonomy (Autonomia Operaia, AUTOP), which has developed the most refined organization of the entire cluster. Seventy-one of its members are currently being tried by the Court of Assizes of Rome for armed insurrection, the organization of an armed band, participation in an armed band, support for an armed band, illegal possession of explosives and weapons, and other crimes. The proceedings are expected to last 1 year. While the outcome of the trial cannot obviously be predicted, the following observations on AUTOP have a direct bearing on the pattern of auxiliary support.

AUTOP was formed shortly after the self-resolved dissolution of Workers' Power (Potere Operaio, POTOP), a similar extraparliamentary organization in existence from 1969 through 1973. Beginning on April 7, 1979, the judiciary issued a number of arrest warrants and indicted numerous professors, intellectuals, writers, and activists within the ranks of AUTOP. The prosecution has substantially argued that the dissolution of POTOP decided at its party Congress of 1973 in Rosolina was purely tactical. At this time, its members secretly agreed to form two parallel branches of the dissolved organization: one consisting of clandestine elements that were to become part of terrorist organizations and the other consisting of a supporting legal structure that came to be known as AUTOP. Moreover, the leadership of both branches remained vested in a unitary directorate responsible for providing both ideological and operational guidance.

Whatever the merits of the prosecutorial posture, it is a fact that the activism of POTOP/AUTOP runs parallel to the operations of the BR, PL, and sister groups. It initially pursued confrontation politics in the factories, but progressively deemphasized verbal dissent vis-a-vis the system and began to promote disorders and violence, especially in the course of labor union unrest and demonstrations. Its tactics have included public instigation to commit

crimes and urban guerrilla actions entailing the use of Molotov cocktails as well as firearms.

Indicative of AUTOP's ideology are numerous political slogans such as "Work is not a manner of living, but the obligation to sell oneself in order to live." From the struggles within the factories for guaranteed wages, AUTOP expanded its subversive propaganda and militancy to include unilaterally reduced payments of rent by tenants and of public-utility rates by customers, seizure of unrented apartments, resistance against eviction, and proletarian expropriations in supermarkets. It also targeted the school system, because of its alleged role as the school of unemployment, selectivity, and repression.

Moreover, AUTOP devoted intensive attention to the prisons in conjunction with the militancy of such groups as Red Aid (Soccorso Rosso),[23] whose members on the surface render gratuitous legal assistance to political detainees stricken by the bourgeois repression; but in practice, besides serving as defense counsel for extremists and terrorists of the left, act as intermediaries between imprisoned terrorists and terrorists at large, thus providing operation liaison. Significantly, attorney Edoardo Arnaldi, a former Communist partisan, committed suicide on April 19, 1980, as he was about to be arrested by the Carabinieri, pursuant to a warrant issued on those grounds. Another attorney, Sergio Spazzali, received a 4-year prison sentence on the same grounds on March 20, 1982, at the conclusion of the appellate proceedings against 72 members of the Turin column of the BR. Still another attorney, Giovanna Lombardi, is currently under indictment in Rome.

The militancy of AUTOP and of its predecessor POTOP in the Padua province and, through its appendages, in the Veneto region [24] affords an instructive example with respect to both the logistical/service aspects and operational aspects of the auxiliary support pattern as applicable to a specific area of the country.

The University of Padua and, in particular, its Political Science Department served since the late 1960's as a training area for terrorist cadres. Under the intellectual inspiration and charismatic leadership of Professor Antonio (Toni) Negri and his academic assistants—most of whom are today under indictment together with Negri—POTOP developed firm structures within the University itself. A main vehicle used for this purpose consisted of self-managed seminars (seminari autogestiti). Moreover, because of unfavorable local conditions (high cost of food and lodging), the student population, much of which is from out of town, became a fertile ground for extremist recruitment.

During the transition period between the demise of POTOP and the formal birth of AUTOP, loosely structured groups known as the Paduan Political Collectives (Collettivi Politici Padovani) insured an unbroken chain of succession in the province.

Paduan AUTOP has traditionally been a two-tier organization with an overt and a covert structure. The overt structure has en-

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[23] The background of Red Aid is traced in three articles published by Il Settimanale, May 27, 1980, pp. 6-8; Feb. 3, 1981, pp. 13-14; and Mar. 3, 1981, pp. 24-25 (Rome).

[24] In addition to the Padua province, the Veneto region includes the provinces of Venice, Verona, Vicenza, Treviso, Belluno, and Rovigo.

deavored to establish its presence in local society and disseminate Marxist-Leninist doctrine. The parallel covert structure, reliant upon sympathizers recruited through the overt organization, conducts subversive and terrorist activities by means of cellular groups that have claimed responsibility for their actions under different names.

Throughout its history, Paduan AUTOP maintained logistical bases in the province by using student off-campus quarters as well as the University grounds. Another frequent technique entailed the occupation of empty facilities belonging to the Municipality of Padua. Its influence over the rest of the region has largely been exercised through social centers (centri sociali) which have propaganda and recruitment purposes. Notably, on April 11, 1979, a few days after the April 7 indictments of leading members of Paduan AUTOP, a device accidentally exploded in Thiene—a municipality in the neighboring province of Vicenza—while it was being manufactured. In the devastated premises, weapons, sketches of Carabinieri installations, and other subversion/terrorism-oriented materials were uncovered and confiscated.

Formations believed to be connected to Paduan AUTOP that have perpetrated major terrorist acts in Padua and elsewhere in the Veneto region include the Combatant Communist Front, Combatant Communist Youth Front, Workers' Organization for Communism, Armed Anti-Fascist Groups, Communist Front for Counterpower, and Communist Combatant Nuclei (see appendix XIII).

Notwithstanding notable setbacks suffered at the hands of the judiciary and police since the late 1970's, Paduan AUTOP retains sufficient assets to publish a monthly, known as Autonomia, which may be considered to be the link between what is left of the overt and covert structures of AUTOP in the province and possibly in the region.

Beyond the above-mentioned aspects of the auxiliary support pattern, AUTOP reportedly entertained much more ambitious plans. For example, ideologues Francesco Piperno, a professor of physics at the University of Cosenza, Lanfranco Pace, and Oreste Scalzone, all associated with the extraparliamentary Communist Revolutionary Committees (Comitati Comunisti Rivoluzionari—Co.Co.Ri.) and the publication Metropoli had attempted to condition the strategies of the BR by infiltrating their ranks through their own disciples Valerio Morucci and Adriana Faranda. During the recent trail of 63 defendants for BR crimes committed in Rome between 1977 and 1981, including the abduction and murder of Aldo Moro, which produced, inter alia, 32 life sentences, repentant red brigadist Massimo Cianfanelli confirmed the existence of such a design.

A similar plan or link may have been contemplated or undertaken by AUTOP. Repentant terrorist Patrizio Peci stated:

> We believed that Negri was in direct relationship with PL, in the sense that he provided said organization with the political stance to be followed. This assessment of ours was drawn, at least as far as I am concerned, from the analysis of Negri's writings and of the actions perpetrated

> by PL; that is all. When I use the term *we*, I mean myself and other members of the BR in Turin.[25]

Peci was the leader of the Turin column of the BR.

Hopefully, the trial of the 71 members of AUTOP and the broader "Autonomy" before the Court of Assizes of Rome will shed more light upon this multifaceted pattern.

5. Militants' profiles

To date no published work is available which has addressed in a comprehensive manner the background of the individual terrorists of a Communist or any other inspiration. Apart from the fact that it is difficult to gather the pertinent vital statistics and other personal data, it must also be borne in mind that between 1968 and 1982 at least three, if not four, generations of terrorists have succeeded one another by taking over where the previous one left off because of arrests or casualties. This is particularly true of the leftist sector with special reference to the BR.

Most of what is now a generally accepted matter of record pertains to the first two generations of the BR, the founders of the comparatively short-lived NAP, and the original members of PL. Given the relatively limited bearing of this information on the more recent years of Communist-inspired terrorist operations, it can be briefly summarized as follows.

As an organized structure, the BR came into existence in 1970 as an offshoot of the Political Metropolitan Collective (Collettivo Politico Metropolitano—CPM) of Milan. The historic nucleus or first generation of the BR was made up of former Catholic students from the Sociology Department of the University of Trent (e.g., Renato Curcio, Margherita Cagol, and Giorgio Semeria), former activists of the PCI and its youth organization (FGCI) principally from the heavily Communist Emilia-Romagna region (e.g., Alberto Franceschini, Prospero Gallinari, Tonino Loris Paroli, and Lauro Azzolini), and former militants of extraparliamentary aggregations of the left (e.g., Mario Moretti, Pietro Bertolazzi, and Corrado Alunni), most of whom were employed in Milan by major industries such as Pirelli and Sit-Siemens before assuming a clandestine role. The second generation emerged in the mid-1970's, when BR actions became more violent. The new militants were former members of POTOP/AUTOP and, to a lesser degree, of the PCI.

The NAP emerged in Naples in May of 1974 as a successor to the Movement of Proletarian Prisoners. NAP membership consisted of former extraparliamentary militants associated with Ongoing Struggle (Lotta Continua—LC) and former convicts with internal contacts in the prisons.

PL came into being in 1976 in the Turin and Milan areas as the direct heir of logistical structures which formerly belonged to the covert segment of AUTOP.[26]

With respect to the more recent terrorist ranks of the left, i.e., the third and fourth generations, particulars may be drawn from

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[25] Supra note 17.

[26] For greater detail, see V.S. Pisano, "Contemporary Italian Terrorism: Analysis and Countermeasures," The Library of Congress, Washington, DC, 1979, pp. 45-48, 76, and 82-83.

various press sources.[27] This material complements the examination of the organizational and operational structures of the Communist-inspired component by looking into the makeup of its human resources.

The acquired sample consists of 246 identified extremists who either operate, or have operated, within organized terrorist structures or have carried out terrorist actions outside of those structures. The sample affords the following observations and tentative conclusions.

(1) Age.—The oldest of the sample was born in 1926 and the youngest in 1962. Only 16 were born before 1945, and 51 were born between 1945 and 1950, 103 between 1951 and 1955, 73 between 1956 and 1960, and just 3 since 1961. The current age, therefore, predominately ranges from the early twenties through the midthirties.

(2) Sex.—The sample consists of 200 males and 46 females. The ratio is obviously close to 4 to 1.

(3) Province of last known legal residence.—It may be assumed that at the time they opted to join the armed struggle, those included in the sample lived in these provinces and municipalities as follows: 52 in Milan, including 22 natives; 49 in Rome, including 14 natives; 19 in Padua, including 10 natives; 16 in Turin, including 8 natives; 11 in Bergamo, including 2 natives; 9 in Genoa, including 5 natives; 9 in Brescia, including 1 native; 7 in Naples, including 1 native; 6 in Vicenza, including 2 natives; and 5 or less in other provinces. The ostensible conclusion is that the near totality of these militants entered extremist and/or terrorist circles in the northern and central areas of the country with Milan and Rome (the two most influential provinces of the country) accounting in *each* case for over one-fifth of the sample. A parallel assumption is that even if birth took place outside of the province of residence, the environmental conditions in the latter have influenced the terrorist orientation of the extremists studied.

(4) Political background.—The sample includes 98 individuals formerly associated with POTOP and/or AUTOP and 8 with Ongoing Struggle. The political background of the remaining 140 cannot be reliably classified beyond a leftist orientation. Yet the high incidence of POTOP/AUTOP clearly emerges.

(5) Terrorist affiliation.—A total of 189 individuals appearing in the sample are classifiable as members (at large or in prison) of specific terrorist organizations and 24 as members of AUTOP who have occasionally carried out terrorist actions. The remaining 33 cannot be classified.

Of the 189 militants of specific terrorist organizations, 82 are BR members, 46 are PL members, 24 belong to the Combatant Communist Formations, 11 to the Armed Nuclei for Territorial Counterpower, 10 to the Revolutionary Communist Movement, and the remainder is spread among 6 other groups. The BR and PL clearly account for nearly 70 percent of the subsample. Interestingly

[27] They include the dailies Corriere della Sera (Milan), Il Giornale Nuovo (Milan), Il Tempo (Rome), La Repubblica (Rome), and La Stampa (Turin) as well as the weeklies Il Settimanale (Rome), L'Espresso (Rome), and Panorama (Milan).

enough, 75 out of 189 militated in the ranks of POTOP/AUTOP before joining specific terrorist organizations.

Of the 24 AUTOP members who have occasionally carried out terrorist crimes, 4 are former POTOP militants, one is a former anarchist, and 19 are unclassifiable extremists of the left.

Of the remaining 33 unclassified individuals, the following is their former affiliation: POTOP (2), AUTOP (11), militancy in both POTOP and AUTOP (6), Ongoing Struggle (1), Student Movement (1), PL (2), extreme left in general (10).

The sources from which the sample was gathered do not report additional information that can be processed with any degree of reliability. With respect to education, for example, it would appear that practically all the individuals in the sample have a secondary school education and that at least 5 percent hold university degrees, but this estimate must be regarded as an approximation.

6. Numerical strength

The numerical strength of the leftist sector has frequently been the object of conflicting assessments; however, none of them has proven to be conclusive. In March of 1980, Francesco Mazzola, then acting chairman of the Intelligence and Security Executive Committee (CESIS), warned that any attempt to assess the numerical composition of the terrorist groups of the left is haphazard because "the destructive array of the left if vast, uneven, and composite." [28]

An indirect indication of its numerical strength has already been provided in the "Nature and Incidence" section of this study, which reflects that as of October 31, 1982, the Italian prison population included 1,357 terrorists of the left, and 274 additional individuals had been identified and placed on the wanted list. A further classification of those figures affords more significant details. A total of 713 inmates belong to the BR, 305 to PL, 337 to other organizations; and 97 wanted terrorists belong to the BR, 61 to PL, 116 to other organizations. In this connection it is also worth noting that approximately 200 BR bases, 100 PL bases, and 39 NAP bases had been dismantled by the police forces as of the same date.

Although no scientific precision can obviously be attributed to it, the apparent current consensus of terrorism specialists would credit the leftist component with the following numerical strengths at key stages:

(1) BR.—50 militants when organized; 1,000 at the point of maximum expansion in 1978-79, plus some 2,000 external supporters; 100 at the end of 1982/beginning of 1983, plus 200 external supporters.

(2) PL.—20 militants when organized, plus as many as 1,500 to 2,000 potential supporters; 2,500 at the point of maximum expansion in 1979; 100 at the end of 1982/beginning of 1983. These remaining assets should be considered, however, as remnants that do not necessarily look to PL any longer as an umbrella organization. Moreover, the figure at the point of maximum expansion takes satellite groups into account.

[28] Il Tempo, Mar. 5, 1980, p. 15 (Rome).

(3) *Other formations and terrorist prone elements of extraparliamentary organizations.*—6,000 militants by 1978–79; 700 to 800 militants by the end of 1982/beginning of 1983, plus 4,000 supporters/sympathizers.

As pointed out in the "Nature and Incidence" section, there is a generalized tendency to use the term left as a catchall for groups that profess a Marxist-Leninist ideology as well as groups that combine it with other political persuasions, such as the anarchist and internationalist ones. Consequently, figures cited above regarding unspecified organizations should be viewed as slightly in excess of Communist-inspired extremists in the strict sense.

7. Targets and targeting techniques

All the terrorist organizations of Communist inspiration are extremely selective in their choice of targets. A given target is chosen because of its representativeness or symbolic value as well as on account of its comparative accessibility and vulnerability.

Typical human targets include executives, managers, foremen, and representatives in the fields of industry, commerce, and finance; political figures associated with the relative-majority Christian Democratic Party; conservative spokesmen and activists; members of the judiciary and law enforcement agencies; and journalists and professors regarded as part of the establishment. Typical material targets include real and personal property belonging to the state and public entities, private enterprises, and individual citizens.

Actions against property are usually regarded as complementary to attacks on individuals. At the same time, less sophisticated operations against human targets are intended to be complementary to the more sophisticated or complex ones.

Internal debate or dissent within an organization or between different organizations does not address the type of target to be destroyed or otherwise singled out but concentrates on political strategies. For example, the feud between militarists and movementists inside the BR does not involve targeting. The militarists favor BR hegemony over the entire combatant Communist party, as well as concentration of effort in the industrial sector of Italian society. The latter aspect has led some observers to refer to them as the northerners. The movementists, on the other hand, prefer a closer collaboration scheme with sister terrorist bands of the left and concentration of effort in the prisons and among nonskilled workers. For this reason, they have also been termed southerners. It might be said that the less rigid approach of the latter is somewhat closer to that of PL and of the Autonomy.

As a rule, the leftist component adopts three standard targeting techniques: the placement of one or more explosive devices, the classical ambush attack, and the raid. Less frequent is the political abduction, which requires greater organizational assets as well as operational sophistication.

(1) The most rudimentary form of targeting is all too clearly the detonation of explosives. One or more devices are affixed against the selected material target, most frequently during hours of darkness, in order to do damage to property and possibly to given indi-

viduals, although there is always the accepted risk that bystanders will be hurt (see appendices XII and XIII).

Besides accounting for the largest number of terrorist crimes, this type of action is usually the work of minor organizations or of militants being trained or tested for membership in the major ones. For its execution, limited assets are required beyond the acquisition or manufacture of the device. In point of fact, one or two militants can simply deposit such ordnance in various areas of the same municipality within a matter of hours if not minutes. The so-called nights of fire entail this technique. Responsibility for this type of action is not always claimed, but its political coloration is often made manifest by the circumstances surrounding its perpetration.

Passage from rudimentary actions of this nature to the more sophisticated ones can be indicative of operational and/or structural enhancement. The BR, the NAP, and PL passed through this stage of bombing and arson attacks before graduating to a more advanced operational status.

(2) The classical ambush attack is obviously conducted against human targets and is predicated upon the element of surprise. It also falls within the concept of hit-and-run operations, speed being essential.

The victim of this targeting technique is usually singular. Occasionally there may be two or more victims, principally when the attack is conducted against motorized human targets. Before attacking the victim, his habits are closely scrutinized and, where possible, intelligence is acquired from planted informants such as the previously described irregulars and points of contact. The ambush itself is conducted at a well surveyed location and at a preestablished time. The size of the commando unit varies from two to five members, a number that roughly corresponds to the typical brigade of the BR or to an otherwise named cell of kindred organizations. One female member frequently participates in the action. The attackers are nearly always unmasked, but disguised. Some of them are responsible for covering the avenue of escape. The attacking party closes in on the victim preferably on foot or, if the situation warrants it, by car or motor scooter.

The ambush mission entails in most cases woundings or murders, in that statistical order. However, victims have also been subjected to minor forms of punishment such as chaining in place, with or without a poster around the neck, and haircuts. A secondary purpose of the ambush may be to disarm a law enforcement agent for procurement purposes. Once the mission is accomplished, responsibility is claimed by means of a leaflet left in place or subsequently made available to a newspaper or press agency or by a telephone call to the media.

The written responsibility claim may relate to a single attack or combine a number of them. For example, the Rome column of the BR issued a single communique in December of 1979 disclosing its paternity in the attacks on policemen Romiti, Granato, and Tedesco; however, in May of 1980, the Veneto column devoted an entire communique exclusively to its action against Albanese, a police official (see appendix XII). The difference in procedure may be related to the importance of the target or to internal organiza-

tional contingencies. Moreover, the communique usually offers an explanation for the selection of the victim and often provides a resume of the victim's career. In still other cases, a paternity claim will make reference to previously perpetrated actions and link the latest one to the explanation given for the former. This was the case with the communique of the Rome column of July 1982 taking responsibility for the attack on police official Ammaturo, while referring to the Delcogliano and Cirillo incidents (see appendix XII).[29]

A close examination of recorded attacks (see appendices XII and XIII) reasonably leads to the conclusion that many of them are either organized into clusters or are programmed to lend greater sophistication and a more intimidating effect to the endeavors of the terrorist left. The following categorizations seem appropriate:

—Attacks on a specific category of individuals such as businessmen, journalists, magistrates, and Christian Democratic representatives within a brief time span in the same municipality or in areas far apart. For example, the BR wounding of two corporate executive employees on June 30, 1977, in two different cities and two more under analogous circumstances on May 4, 1978; the BR wounding of three journalists at the rate of one per day, 64 between June 1 and 3, 1977, in three different cities; the BR murder of a state attorney and of a supreme court judge on March 16 and 18, 1980, respectively; the BR wounding of three Christian Democratic representatives in three different cities between July 11 and 13, 1977.

—The rotation of category attacks is a corollary to the preceding technique.

—The stepped-up rhythm of violence against specific categories of individuals as a technique was particularly visible during the campaign preceding the national election of June 1979, when the Christian Democratic Party became a frequent target with respect to both personnel and facilities.

—Regarding the selection of a single victim who represents more than one enemy institution, the Christian Democrats are the most common example of dual targets because of their concomitant nonpolitical activities as business executives, professors, and journalists. But the most significant examples relate to the BR murder of Lt. Col. Varisco of the Carabinieri and Professor Bachelet, both of whom merged three targets into one. Varisco, as commander of the unit in support of the Rome court house, represented the police, the judiciary, and the prisons. Bachelet, on the other hand, besides being an academic, was also the Deputy Chairman of the Superior Council of the Judiciary and an active Christian Democrat.

—The time context of the attacks in relation to specific events. For example, the murder of Genoa State Attorney Coco and his escort in 1976 and that of Turin Bar Association Presi-

[29] Communiques are issued either by individual columns or by the organization as a whole. Responsibility claims made by the organization rather than a single column can be indicative of multicolumn effort. It might be noted that the columns usually possess a name in addition to a geographical indicator. The name they adopt is that of a fallen comrade. E.g., Turin column: Mara Cagol; Milan column: Walter Alasia; Genoa column: Francesco Berardi; Veneto column: Anna Maria Ludman; Naples column: Fabrizio Pelli.

dent Croce in 1977, thus causing two postponements of the trial of the historic nucleus of the BR; the wounding of a public security patrolman on October 24, 1978, a few hours after the Interior Minister had delivered a terrorism report from the floor of Parliament.

—Retaliation against specific individuals including public security NCO Tuzzolino who was wounded by the NAP because of alleged mistreatment of his prisoners; labor union representative Rossa and extraparliamentary activist Waccher who were murdered by the BR and PL, respectively, because they were accused of being spies and traitors; snack bar owner Civitate who was murdered by PL because he was held responsible for calling the police while two militants were in his business establishment.

—Retaliation in other cases is not directed against the individual himself, but in response to a successful police operation. Prison guard Cinotti was murdered by the BR in April 1981, to avenge the arrest of historic nucleus member Mario Moretti a few days earlier.

—Attacks against individuals believed to be active in removing discontent and consequently hindering the revolution, for instance, the PL murder of Assistant State Attorney Alessandrini in January of 1979.

—Intimidatory attacks against police officials and operatives particularly involved in public order and counterterrorism. In May of 1980, the BR murdered public security official Albanese.

—Random attacks against targets of opportunity. Standard victims are motorized or dismounted police.

In several instances a single attack reflects the application of a combination of the above-listed procedures.

(3) Raids are directed against human targets, material targets, or both. Depending upon the mission of the raid, the numerical composition of a raiding party usually ranges from 4 to 12 people. Raids frequently entail forcible entry into offices or dwellings and serve various purposes which can easily be merged into a single terrorist action.

In the course of the same raid one or more representative individuals might be murdered or wounded, the walls of the premises might be spray-painted with ideological slogans and the name of the perpetrating organization, and documents of intelligence value and/or material of logistical use might be stolen. The raid produces its inherent demonstrative effect if just one or all of these objectives are accomplished.

Moreover, when a selected victim cannot be targeted by means of the classical ambush attack in the street, in an automobile, on a bus, or in any other place easily accessible to the public, the raid affords an alternative solution through an invasion of the victim's office or residence. At the same time, while the ambush attack limits the attackers to the use of firearms (generally pistols and revolvers, less frequently submachine guns and shotguns), the raid allows the added use of explosives.

Appendix XII provides pertinent examples of raids against Christian Democratic and Italian Social Movement party offices, busi-

ness concerns, technical schools, and military and police installations. Particularly significant is the one conducted by the BR on May 3, 1979, against the Christian Domocratic Committee offices in Piazza Nicosia, Rome. These examples, however, reflect an absense of overall coordination regarding the utilization of the raid by comparison with the previously discussed classical ambush technique. The only time when raids appear to have been planned in the form of a cluster was in 1982. Three such raids were conducted by the BR against army and air force installations in the Rome and Caserta areas. All three involved silent penetration of the military perimeter, overpowering of elements of the guard force, and the theft of weapons, while no casualties were suffered by either side. This cluster also seems to have been coordinated with attacks on military vehicles.

Unless intended as mere self-financing ventures, such as armed robberies lacking proletarian significance, the responsibility for a raid is always claimed by the perpetrating organization. For example, even though the main purpose of the above-mentioned attacks upon military installations was to acquire weapons, the very fact that the army and air force were being targeted was sufficient reason to claim responsibility for the action and publicize it.

(4) Twenty-four known kidnapings have been perpetrated by the terrorist left. They are usually classifiable as either for political or ransom reasons. The less sophisticated political ones are substantially symbolic. Of this total, 18 are attributable to the BR (15 political, 2 for ransom, and 1 to procure medical assistance); 3 to the NAP (1 political and 2 for ransom); 1 to the October XXII Circle (ransom); 1 to the UCC (political, although it entailed a demand for below-market-price distribution of meat in Rome's proletarian neighborhoods); and 1 to Autonomy-connected elements (ransom). Of the 24 victims, 17 were released by their captors, 3 were freed by the police, and four were murdered (3 executions and 1 accidental death because of improper gagging).

The same type of preparatory work required for ambushes and raids is performed for abductions. However, the latter require greater manpower and assets, especially if the victim is under armed escort or, even more so, if the purpose of the abduction is political, thus entailing in many instances a proletarian trial, interrogation, and sentencing, not to mention the periodic issuance and delivery of trial-related communiques and more or less spontaneous letters from the abductee to relatives, associates, and/or public figures.

Basic data pertaining to these kidnapings, including classification and outcome, appear in appendices XII and XIII. Even a casual reading of this chronology discloses the relatively occasional nature of kidnapings perpetrated by the NAP, the October XXII Circle, and the UCC, as opposed to the usually systematic nature of the ones carried out by the BR. Consequently, some comments are in order with respect to kidnap activities of the BR.

Political kidnapings were inaugurated, developed, and refined by the BR. Contrary to other groups of the left (and of the right) that embarked upon kidnap ventures for revenue purposes, the BR resorted to kidnaping from the very start as a political tool. In fact, the BR ostensibly regard them as military operations within a pro-

gram of political objectives predicated upon the exploitment of contingent social, economic, and political situations.

The first six, which took place in the industrial triangle of Milan-Turin-Genoa during the period 1972–74, reflect both technical evolution and target expansion. The first two abductions lasted only a few minutes, just long enough to propagandize against capitalism and Fascism. The second two lasted a number of hours and consisted of an interrogation in the first case and a proletarian trial in the second. The fifth and sixth lasted 8 days and 33 days, respectively, and a number of communiques were issued during captivity, as opposed to the heretofore standard responsibility claimer after release. Significantly, the first five victims were business establishment figures or individuals with business connections. The sixth was a prosecutor, and his abduction represents the first direct challenge to the authority of the State itself. Moreover, for the first time the BR attempted to place themselves on a par with the State by demanding the release of eight convicts who had militated in the ranks of the BR-absorbed October XXII Circle.

The four abductions that followed this cluster are not nearly as significant. Two constitute revenue ventures, whereas the remaining two are basically demonstrative. Their comparatively modest caliber may be attributable to the need for self-financing and to the then ongoing changes in human resources as the historic nucleus of the BR was being replaced by a second generation. The BR were in a transition period.

The subsequent two abductions—that of Christian Democratic Party President, member of Parliament, and former Prime Minister Aldo Moro, in 1978, and that of Supreme Court Judge Giovanni D'Urso, detailed to the Ministry of Justice as chief of the Third Division of the General Directorate for Penitentiaries, in 1980—are linked to each other with respect to substance, notwithstanding the time differential. They both represent a deep thrust at the very heart of the state. Just as in the targeting of Aldo Moro, whereby the BR symbolically merged in one victim their attack against a plurality of institutions—the national executive, the Parliament, and the relative-majority Christian Democratic Party—the targeting of D'Urso was a simultaneous attack against the judiciary and the prison system. In both instances, as in the 1974 kidnaping of Assistant State Attorney Mario Sossi, the BR presented themselves as coequals of the state at the bargaining level. For Moro's freedom, they asked that 13 jailed terrorists be released. The request was denied. The liberation of D'Urso was at long last left to the decision of the imprisoned terrorists. The outcome is well known: Moro was executed and D'Urso was freed. In both instances, the BR exploited media coverage to the fullest by the use of communiques, requests, and complementary activities. Their inclusion in governmental agendas and in the focus of public opinion was further made manifest by the debate between those who favored negotiating with the BR and those who espoused the hard line.

BR kidnapings in 1981 were once again distributed in a cluster form. Moreover, the fact that four abductions were unprecedently perpetrated during an overlapping period of time did lend a new dimension to the terror campaign. The victims were abducted in four areas of the country, far apart from one another, and for dis-

similar purposes. Yet these abductions represent coordinated campaigns over several fronts.

The first victim was a Christian Democratic councilman responsible for urban planning and economic affairs in the Campania region. His abduction, in addition to deepening the operational penetration into the South, was an attempt to exploit popular discontent, following inadequate governmental relief to the victims of the previous year's earthquake. The second abductee was the manager of a petrochemical plant in the Veneto region. According to the BR, his abduction and final execution was part of their campaign against the multinationals. The third victim, another executive, worked for the Alfa Romeo motor comany in the Milan province. His abduction was intended as a protest against disciplinary measures vis-a-vis certain unruly plant employees. The fourth was the brother of repentant red brigadist Patrizio Peci. The intimidatory purpose of this abduction and ensuring execution is all too obvious.

The kidnaping of U.S. Brig. Gen. James Lee Dozier, Deputy Chief of Staff for Logistics and Administration of the Allied Land Forces Southern European Command in Verona, at year's end is a tangible manifestation of the BR's stance vis-a-vis NATO and, indeed, the United States.

There was only one abduction in 1982, and it had no meaning beyond the practical purpose it served: the need for an x-ray technician to assist wounded brigadists.

A few generalizations can be made with respect to the dynamics of kidnapings by organizations of Communist inspiration beyond what already emerges from the preceding discussion:

(1) The presence of armed escorts does not discourage abduction plans. This fact is true of the Moro, Cirillo, and Sandrucci cases.

(2) There appears to be no preferred specific time or place for the abduction of victims. By and large, it can be said that most abductions take place during early morning, late afternoon, or early evening hours somewhere along the route between the victim's residence and place of work or other destination.

(3) Although in the vast majority of cases the victim is seized in areas open to the public (mostly city streets or country roads), either while moving on foot or, less frequently, by vehicle, there are cases where the abductors have entered private buildings. The Cirillo, Taliercio, and Dozier cases exhibit this point.

(4) A van is employed in nearly all kidnap actions.

(5) Various disguises are utilized by the abductors. The most recurrent is workers' overalls. In some cases, disguises such as plumbers' outfits (Dozier case), or police uniforms (Taliercio case) have been used.

(6) Responsibility for political abductions is always claimed. The same is not true with respect to kidnapings for ransom.

The above-discussed targets and targeting practices are a tangible indication of the fact that none of the organizations present in the Communist-inspired component of the Italian terrorist spectrum have been able to graduate from the stage of coordinated terrorist actions to the more advanced stages of insurgency or civil war, their declared aim. Even extremely isolated actions such as

the firing of crew-served weapons against Carabinieri barracks, as opposed to the recurrent four techniques referred to above, is not indicative of progression in the desired direction.

8. Behavior upon arrest and during imprisonment

Hit-and-run operations against unprotected or lightly protected targets—civilian police, or military—constitute the substance of terrorism as opposed to insurgency or civil war situations, where armed dissident forces are able to control a portion or portions of the national territory or, as a minimum, are capable of engaging in a fire conflict with sizeable police or military units.

To date, all terrorist groups of the left and, indeed, of other persuasions active in Italy have carefully avoided any type of fire exchange with the police or the military, regardless of unit size. In point of fact, known fire engagements pertain exclusively to rare attempts on the part of individual terrorists to resist arrest. (Virtually all such cases are listed in appendix XII.)

Militants of Communist-inspired groups have traditionally declared themselves political prisoners upon arrest and have refused to cooperate with the police or judicial authorities. The phenomenon of repentant terrorists, which will be discussed in part II, is a recent development. In keeping with the political prisoner posture, captured terrorists of the left have sought to continue their battle inside the prisons and courtrooms. They have used the prisons for recruitment and agitation purposes by orchestrating uprisings, escapes, taking hostages, and executing traitors. (See appendix XII.) The courtrooms, on the other hand, have been exploited as theatrical stages and sounding boards by unbent terrorists who seek to run countertrials vis-a-vis the judges and the system in the courtrooms themselves. Revolutionary proclamations are frequently read by defendants and in some cases scorn is expressed in the form of poetry. This comportment is primarily attributable to the members of the major organizations (BR, NAP, and PL) but is not altogether foreign to militants of the minor ones. For example, one convicted October XXII Circle member wrote a terrorist manual on toilet paper.

In the philosophy of the terrorist left, as often expressed in its writings, the prisons are the highest expression of class dominance. Consequently, there is a tendency to equate inmates guilty of common crimes with the exploited. For this reason, particular attention is devoted to the prison population in general and to captured terrorists in particular. Many times assaults on prisons have been planned, and in some instances, they have been successfully carried out. For example, in 1975, BR historic leader Renato Curcio was briefly freed by a commando; and in 1982, PL historic leader Susanna Ronconi was also briefly freed by another commando. At the same time, the voice of the imprisoned comrades is actively sought by assigning to them, through the channels already discussed, the preparation of doctrinal tracts. Always in theory, frequently in practice, militancy does not end during imprisonment.

9. International connections

In the murky realm of international connections, a fundamental distinction must be made between ideological, logistical, and, less

frequently, operational links existing between Italian organizations of the Communist component and kindred terrorist organizations or groupings of other nationalities, on one hand, and what has come to be called patron-state support on the other.

The existence of connections between the Italian terrorist organizations of the left and foreign groups of like persuasion is not questioned today by any observer. In fact, a number of concrete examples can be readily cited to illustrate the various levels of international terrorist cooperation.

Since the early 1970's, the BR have been in contact with the German Red Army Faction (RAF) in order to exchange mutual assistance in the areas of safehaven, logistics, and operational experience. In several ways the BR have imitated and even surpassed their German counterparts. For instance, the Hans Schleyer kidnaping served as a blueprint for the Aldo Moro abduction. The Dozier affair surpassed in every respect the RAF's actions against U.S. military installations and personnel in Germany. In March of 1980, three red brigadists were arrested in Toulon, France, along with a number of local counterparts belonging to Direct Action (Action Directe—AD) while conducting joint proletarian expropriations on the Cote d'Azur. The BR were also training AD militants. In October of 1981, five local nationals were convicted in Locarno, Switzerland, for a number of crimes, including supplying the BR and other Italian terrorist organizations of the left with weapons and explosives. In January of 1982, Italian judicial proceedings determined that, after the summer of 1978, 10 members of PL and of the Communist Combat Formations (FCC) had trained in the use of crew-served weapons and explosives with members of the Basque ETA in an area near the Spanish-French border. Approximately 200 Italian extremists associated with the BR, PL, AUTOP, and other groups are estimated to be enjoying safehaven in France, particularly in Paris.[30] In connection with these affairs, the judiciary is investigating the activities of a Parisian language school by the name of Hyperion, founded by Italian national Corrado Simioni, who had militated in the Metropolitan Political Collective of Milan, the above-mentioned extraparliamentary group considered to be the cradle of the historic nucleus of the BR. According to the Italian magistrates, Hyperion serves as a support structure for Italian extremists of the left.[31]

Outside of Europe, the Italian Communist-inspired terrorist organizations have enjoyed contacts with Palestinian groups in Lebanon and elsewhere, primarily for purposes of training and the acquisition of weapons. In February of 1981 the Rome daily Il Tempo published a photograph, reportedly acquired in 1980 by the Carabinieri, of the Oreste and Rolando Strano brothers, formerly of POTOP, together with a Fedayeen displaying a Soviet Kalashnikov AK 46 rifle.[32] At least two cargoes of weapons were brought into

[30] This estimate appears in La Repubblica, Oct. 31/Nov. 1, 1982, p. 12 (Rome). France has a long established tradition for granting asylum to expatriates of various political persuasions. It is believed, however, that one-half of the cited estimate consists of individuals who have entered the country clandestinely.

[31] For informative background, including an interview with Professor Simioni, see Il Tempo, Dec. 22, 1982, p. 1 (Rome).

[32] Il Tempo, Feb 2, 1981, p. 1 (Rome).

Italy in the late 1970's by BR historic leader Mario Moretti, the organization's liaison officer until his arrest in April of 1981. Other cargoes were handled by one Maurizio Folini of the Communist Revolutionary Committees (Co.co.ri.) for distribution among various subversive formations of the left. However, the most clamorous episode of this nature occurred on November 8, 1979, when Daniele Pifano and two other Autonomy-linked extremists were arrested in Ortona (Chieti) while in possession of two Soviet Strela (SA–7) missile launchers. Following their arrest and indictment, the Popular Front for the Liberation of Palestine (PFLP) sent a telegram to the court claiming ownership of the missile launchers and alleging that these implements of war were merely transiting on Italian territory.

Much more difficult to assess is patron-state support, since available knowledge is based on circumstantial evidence and testimony, as well as logical induction and deduction. Cuba, Libya, and the East-European Communist bloc countries have been repeatedly indicated in the press and on the floor of the Italian Parliament as supportive of leftist terrorism in Italy.

Circumstantial evidence accounts for the pointing of an accusing finger at Cuba. Giangiacomo Feltrinelli spent time there in the mid and late 1960's as Fidel Castro's personal guest. He was also the Italian editor of Cuba's revolutionary publication Tricontinental. In 1967, he attended the trial of Regis Debray, the Frenchman who had followed Che Guevara on his last guerrilla campaign. Not long thereafter, Bolivian Consul Roberto Quintanilla, hated by the revolutionary left because of his role in relation to the capture and death of Guevara, was murdered in the Federal Republic of Germany with a pistol owned by Feltrinelli. Moreover, as narrated in a book put out by Feltrinelli's publishing company, Renato Curcio and his wife Margherita Cagol (Mara), both of the historic nucleus of the BR, visited Cuba at the incipient stage of leftist terrorist activities in Italy.[33] The Cuban link also surfaces in connection with the anarchist organizations, a discussion of which follows below.

A more incisive role in the destabilization of Italian institutions and society has been attributed to Libya's Muamar Qaddafi.[34] His endeavors reportedly include support for the terrorist left as well as extremist organizations of other persuasions. This is how a specialized English-language publication summarizes Libya's patron state role vis-a-vis Italian terrorism of the left:

> A number of captured terrorists of the Left, including former militants of the Red Brigades (BR), Front Line (PL), and Revolutionary Action (AR), revealed to the investigating magistrates that at least since 1978 Libya has been an intermediary in the purchase of weapons from the Middle East and primarily from the Popular Front for the Liberation of Palestine (PFLP). These weapons which range from automatic rifles to portable missile launchers, were distrib-

[33] I. Fare, et al., "Mara e le altre," Feltrinelli, Milano, 1979, p. 28.

[34] For a discussion of Italy-Libya relations with particular reference to reported acts of violence perpetrated by Qaddafi's regime, see V. S. Pisano, "Libya's Multifaceted Foreign Policy: The Italian Application," Congressional Record, No. 187, pt. II, vol. 127, Dec. 15, 1981, Washington, DC, S 15373-15375; and "Libya's Foothold in Italy," The Washington Quarterly, spring 1982, Washington, DC, pp. 179–182.

uted to various elements of the BR, PL, and the terrorist-supportive Workers Autonomy (AO). The arms cargoes usually followed water routes and were deposited along the southern Italian coast at selected locations. At least one weapon can be traced directly to Libya. An automatic rifle sold in December of 1978 by the Belgian firm Herstel to the Libyan government was found in June 1980 in a raided PL safehouse. . . . A locality near Bengasi under the code name of "Zujur" has been indicated as the Libyan training site for Italian terrorists of all persuasions.[35]

But the most grievous accusations have been levelled against the East-European Communist bloc countries, which in fact have a long history of clandestine operations in Italy in the interrelated fields of espionage, recruitment, infiltration, disinformation, and subversion.[36]

A review of data, circumstantial evidence, and statements available in open sources, both governmental and private, presents a disquieting picture of the varying degrees of linkage in existence through the years between the U.S.S.R., Yugoslavia (before its break with the Soviet bloc in 1948), Czechoslovakia, and Bulgaria, on one hand, and Italian subversive elements and groupings of the left, on the other hand. What follows is a country-by-country summary of significant reported links.

(1) U.S.S.R.—The involvement of the Soviet Union in Italian subversion, political violence, and terrorism is believed to take place in most instances through proxies selected from among its East European satellites, over which the Soviet Union exercises various forms of dominance and direction, and nonsatellite countries otherwise linked to it, such as Cuba and Libya.

There are, nevertheless, specific cases of direct Soviet involvement. According to recently declassified Interior Ministry records from the 1948–50 period, one Victor Pavlov of the Soviet Embassy in Rome was the Cominform's delegate responsible for the paramilitary activities of sectors of the Italian Communist Party (PCI).[37] Thereafter, as late as 1963, the U.S.S.R. arranged for the arming of Italian Soviet-philes through Austrian Communist Party channels.[38] On May 29, 1972, SID—the Italian intelligence service

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[35] "Update Report," Clandestine Tactics and Technology, International Association of Chiefs of Police, Gaithersburg, MD, vol. VIII, Issue No. 4, 1982, pp. 3-4.

[36] For an overview of the entire spectrum of clandestine activities perpetrated in Italy by the Soviet Union and its former and present East European satellites from the end of World War II through April of 1981, see V. S. Pisano, "Communist Bloc Covert Action: The Italian Case," International Association of Chiefs of Police, Gaithersburg, MD, 1981.

[37] See L'Espresso, July 15, 1979, p. 48 (Rome).

[38] This information was disclosed by Czech defector Jan Sejna during an interview in 1980 with Il Giornale Nuovo of Milan. Sejna, former Secretary General of the Defense Committee of the Czech Central Committee, First Secretary of the Ministry of Defense, and member of the Collegium of the same Ministry, defected to the West in early 1968 before the Soviet invasion of Czechoslovakia, as opposed to other defectors from the Czech intelligence service, such as Ladislav Bittman, Josef Frolik, and Frantisek August, all of whom left after the "Prague Spring." Moreover, Sejna's defection was less than ideological, since he was involved in a financial scandal, according to the testimony of Czech expatriate Jiri Pelikan, now a member of the European Parliament elected on the Italian Socialist Party ticket (see L'Espresso, Feb. 15, 1981, p. 29). Despite the circumstances of Sejna's defection, his revelations regarding the period before his departure from Czechoslovakia are likely to correspond to reality. Less reliable are his many statements pertaining to events on the borderline between his defection and the explosion of contemporary terrorism in Italy, if not corroborated by other sources.

of the time—sent a memorandum to the government recommending the expulsion of 22 Soviet agents responsible for espionage and subversion, including links with Feltrinelli and groups of the extreme left.[39] (This recommendation was not approved presumably because of other political considerations.) Excerpts from what appears to be that memorandum were subsequently acquired by the press and published as part of a collection of documents on terrorism. The Soviet agents' activities included: ". . . liaison for the support of, and joint action with, the PCI and extraparliamentary movements of the extreme left; special operational liaison with Feltrinelli's subversive organization and, subsequently, with the Red Brigades . . . training of activists in Cuba and Moscow."[40] The same memorandum reports that at least until 1971, the training received in Moscow included a bloc of instructions on firearms, explosives, and guerrilla warfare. Finally, Italian diplomat and Russian linguist Renzo Rota, who analyzed the communiques issued by the BR during the Moro captivity, concluded that the political phraseology and linguistic improprieties contained therein could be indicative of Soviet Russian authorship.[41]

(2) Yugoslavia.—The Interior Ministry records cited above also refer to Italian work brigades organized in Yugoslavia for the training of PCI militants who went on from there to fight in Greece under the Communist guerrilla leader Marcos Bafeiades. Overall operational control over recruitment was exercised clandestinely by Soviet Colonel Dukonovski, stationed in Milan.[42] Yugoslavia's involvement was obviously short lived, since that country broke away from the Soviet fold in 1948.

(3) Czechoslovakia.—From the 1940's through to recent years, the role of Czechoslovakia as a Soviet proxy for Italian operations appears to be the most pervasive. Czechoslovakia initially served as a safehaven for Communist partisans and members of the above-discussed PCI's Red Strike Force who had to flee Italy because of political and common crimes committed through 1949. One of them, Francesco Moranino, was employed by Radio Prague's Italian broadcast. This practice was repeated in the early 1970's when wanted terrorists Augusto Viel of the October XXII Circle and Alberto Franceschini and Fabrizio Pelli of the BR were given asylum. Pelli was also employed by Radio Prague. Moreover, all three clandestinely returned to Italy to resume the armed struggle until finally captured and jailed.

Besides safehaven, Czechoslavakia has provided Italian leftist extremists with training. Senator Eugenio Reale, a former Communist who headed the PCI's administrative secretariat, has disclosed the existence of Czech training camps organized in that country as far back as the 1950's with the assistance of the above-mentioned fugitives.[43] Subsequent training sites are reportedly located in

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[39] See statement by a member of the Italian Parliament Vito Miceli, head of SID from 1970-74, in Atti Parlamentari, Camera dei Deputati, VII Legislatura, "Discussioni," Seduta del 19 maggio 1978, Edizione non definitiva, pp. 6-9.

[40] F. Orlando, "Siamo in guerra," Armando, Roma, 1980, pp. 195-196.

[41] See Corriere della Sera, Feb. 19, 1981, p. 26 (Milan).

[42] For a more detailed account in English, see supra note 36, p. 17.

[43] Supra note 32, p. 18.

Doupov, Karlovy Vary, Smokovec, Bratislava, Lidice, and Leda.[44] Other terrorists and extremists of the left who spent time in Czechoslovakia during the current terrorist wave include Giangiacomo Feltrinelli, who traveled back and forth on regular as well as counterfeit passports; Renato Curcio, the historic leader of the BR; Alvaro Lojacono, a major exponent of the Autonomy-oriented Via dei Volsci Colletive of Rome; and Roberto Mander, whose militancy included contacts with anarchist and ultraleftist groups.

In December of 1977, Czech keys were confiscated by the police in a raided BR safehouse in Ostia (Rome). In 1978, the Milan branch of the Autonomy received a subsidy of Lit. 70 million through the Italian affiliate of Czech motor company Skoda, according to the testimony of Interior Minister Virginio Rognoni.[45] Another member of the law enforcement establishment, former Rome Police Superintendent Emanuele De Francesco, testified before the parliamentary committee tasked with the investigation of Italian terrorism that the police had considered the hypothesis that Aldo Moro may have been held captive in the Czech Embassy, which is located a few minutes away from the abduction site. The search did not take place because of extraterritoriality.[46]

It is an interesting commentary that Czechoslovakia has been specifically named by two very diverse figures: General Miceli, the head of Italy's former intelligence service (SID), who is now a member of Parliament on the Italian Social Movement Party slate and therefore of presumably conservative orientation, and Christian Democratic member of Parliament and former Prime Minister, Giulio Andreotti, whose government in 1976–78 enjoyed the unprecedented and unrepeated parliamentary support of the Italian Communist Party, which has always denied Soviet bloc involvement in Italian subversion.[47]

(4) Bulgaria.—Until the beginning of the 1980's, no evidence had surfaced of Bulgarian clandestine operations in Italy other than espionage. The "Bulgarian Connection," as the media refer to this apparently recent development, is currently the object of intelligence, police, and judicial investigations regarding that country's involvement in Italian terrorism of the left and transnational terrorist activities in Italy.

Because of the secrecy required by ongoing investigations, the only reliable elements of information available at this writing can be drawn from the official statements of the Ministers of Justice, Interior, Defense, and Foreign Affairs before the Parliament on December 20, 1982.[48]

The Bulgarian link with Italian terrorism of the left—the parallel transnational terrorism aspect will be treated under a separate heading—revolves around the person of Luigi Scricciolo, a former

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[44] The location of Czech training sites has frequently appeared in the press, but a more professional confirmation was provided by former intelligence director Vito Miceli in the course of a parliamentary debate on Dec. 20, 1982. See Atti Parlamentari, Camera dei Deputati, VIII Legislatura, "Discussioni," Seduta del 20 dicembre 1982, Edizione non definitiva, p. 91.

[45] See L'Espresso, Feb. 8, 1981, p. 12 (Rome); and Panorama, Sept. 15, 1980, p. 43 (Milan).

[46] See Il Giornale Nuovo, Nov. 8, 1980, p. 2 (Milan).

[47] Andreotti's statement, which dates back to 1973, appears in Atti Parlamentari, Senato della Repubblica, VI Legislatura, "Resoconti delle Discussioni," 156a Seduta, 18 maggio 1973, pp. 7588-7665.

[48] See Atti Parlamentari, Camera dei Deputati, "Discussioni," Seduta del 20 dicembre 1982, Edizione non definitiva, pp. 6–117.

activist of a party called Proletarian Democracy (Democrazia Proletaria—DP), who militated in DP's ranks until 1979 when he became the international relations specialist of the Italian Union of Labor (Unione Italiana del Lavoro—UIL). Scricciolo was reportedly in contact with Bulgarian intelligence at least since 1977. In exchange for subsidies badly needed for DP's activities, Scricciolo provided Bulgarian agents with political and military information. Subsequent to his arrest, Scricciolo identified his interlocutors as the formerly Rome-based Bulgarian diplomats Ivan Dartchev and Simeon Guernev.

The relationship between Scricciolo, who was subject to blackmail, and the Bulgarian agents continued after his passage from DP to UIL, which has been very close to its Polish counterpart, Solidarnosc. Through a cousin by the name of Loris Scricciolo, Luigi Scricciolo was also in contact with the BR. His role during the Dozier abduction was to acquire U.S. and NATO intelligence data for his Bulgarian contacts. According to the testimony of repentant red brigadist Antonio Savasta, the BR, on their part, were interested in contacting Bulgarian representatives in an effort to reestablish weapon-supply channels with the PLO, which still, according to Savasta, had been interrupted after the capture of BR liaison officer Mario Moretti in April of 1981.

Significantly, Defense Minister Lelio Lagorio has reported to Parliament that SISMI (the present Italian military intelligence service) monitors "all radio signals transmitted by the Bulgarian security services." A major anomaly was noted "during the days of the abduction, captivity, and liberation of General Dozier." He further stated that ". . . on the day of Dozier's liberation, there was a most singular transmission, totally exceptional, repeated several times. Counterespionage believes that such type of transmission evidences a direct contact between the intelligence headquarters and an individual and a specific agent in Italy." [49]

In the course of the parliamentary debate that followed the reports made by the above-mentioned ministers, former head of intelligence Vito Miceli outlined the history of Communist bloc clandestine involvement in Italy, indicating in chronological order the Soviet Union's proxies: Yugoslavia, Czechoslovakia, and Bulgaria.[50]

Indeed, the explicit anti-U.S. and anti-NATO sentiment of the Italian terrorist left provides a fertile ground for Soviet bloc exploitation. The following BR exhortations are but a few samples of the international political posture of these groups:

—War to the dominance of American imperialism!

—Attack the imperialism of the multinationals and of its military occupation structures: NATO!

—War on imperialist war! War on NATO! War on preventive counter-revolution!

—Attack the centers, the war strategists, and the bases of the American military machine!

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[49] Id. pp. 44-45.
[50] Id. pp. 90-94.

—The revolution will either be internationalistic or will not be! [51]

C. NEO-FASCIST COMPONENT

1. Characteristics

The threat posed by terrorist organizations of neo-Fascist inspiration is second only to that of their Communist-oriented counterparts. This is true with respect to both the number of stable or occasional groupings (see appendix IV) and the seriousness of their actions (see appendices XIV and XV). It should be noted, however, that the neo-Fascist (or rightist) component does not constitute a close runner-up (compare appendix IV with appendix III, on the one hand, and appendices XIV and XV with appendices XII and XIII, on the other). Moreover, the neo-Fascist component possesses neither the clear-cut ideology and revolutionary fervor peculiar to the Communist component nor an equal sophistication in its organization and dynamics. At the same time, many of its militants dedicate themselves to the commission of common crimes as a form of adventurous living in no way related to revolutionary or otherwise ideological goals. Significantly, the terrorist right lacks the supportive structures available to its leftist counterpart.

2. Ideology and objectives

While it is customary to refer to this sector as neo-Fascist or rightist, its cultural points of reference appear to be outside of the humanistic tradition. Its symbols, in fact, are borrowed from Nordic history and mythology. For this reason a number of qualified observers prefer to classify this component as neo-Nazi. Be that as it may, the common objective of the organizations that make up this component is the violent uprooting of the system as it now exists and its substitution with a totalitarian regime that would combine nationalistic and socialistic elements. The contemplated new regime would presumbaly constitute the antithesis of both communism and capitalism. However, insofar as these rightist organizations have failed to produce a systematic body of theoretical or doctrinal tracts comparable to those of the Communist organizations ranging from the BR to AUTOP, their ideology and goals surface in a very fragmented and often contradictory fashion and are generally expressed through grammatically impeachable leaflets and graffiti scrawled on the walls of city streets.

By and large, the rightist organizations variously display attitudes indicative of nationalism, anti-communism, anti-capitalism, racial superiority, anti-clericalism, rigid order, and romantic adventurism. But, notwithstanding their self-attributed status of revolutionaries, it is far from clear how the revolution is expected to come about. This is why their violent symbols and actions are looked upon as the product of "mere conceptual necessity."[52]

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[51] Said exhortations appear in the communiques issued during the Dozier captivity and in a strategic resolution of December 1981. However, anti-U.S. and anti-NATO analyses of the international situation predate that period and are characteristic of the literature of the BR and sister groups. For a brief analysis of these writings in connection with the Dozier kidnaping, which represents the dynamic implementation of BR foreign policy, see V S. Pisano, "Terrorism in Italy: The 'Dozier Affair'," The Police Chief, April 1982, pp. 38-41 (Gaithersburg, MD).

[52] This expression has been used by A. Ronchey in his analysis of neo-Fascist terrorism in "Libro Bianco sull'ultima generazione," supra note 14, pp. 63-92.

3. Composition, structure, and dynamics

Individuals active in rightist terrorist organizations most often share a backgound of militancy in the Italian Social Movement (MSI—Italy's most conservative party enjoying parlimentary representation), in the MSI's youth organization (FdG), or in neo-Fascist organizations without any ties to the MSI. Those who desert the MSI or the FdG to join terrorist organizations generally do so because of disillusionment with the party's insufficient rightist stance and its limited role within the political scene. Still others are expelled for disciplinary reasons. Although the MSI is frequently termed neo-Fascist, its leaders endeavor to dispell this image, whose pejorative connotation in post-World War II Italian political parlance predates the outburst of contemporary terrorism in the late 1960's. Other rightist terrorists come directly from petty-crime circles. In many cases, however, the family background of rightist extremists includes at least one parent who is in a learned profession.

Except for its considerably smaller size, assessing the numerical strength of the terrorist right is no easier than an analogous evaluation of its leftist counterpart. The aforecited acting chairman of the Intelligence and Security Executive Committee, Francesco Mazzola, has stated that the neo-Fascist formations "do not have at their disposal an actual organization. They are spontaneous aggregations of small extremist groups that frequently operate extemporaneously and suddenly."[53] Once again, an indirect indication of numerical strength is offered by the statistics on imprisoned and wanted terrorists of the right provided in the "Nature and Incidence" section of this study. It is a well established fact, instead, that neo-Fascist extremists are concentrated primarily in Rome, in Sicily (particularly in Catania), and, to a lesser degree, in Milan.

Nothing comparable to the structure of the leftist terrorist organizations emerges from the study of the neo-Fascist component. This can be attributed at least in part to the fact that no terrorist band of the right has ever matched the numerical consistency of the major organizations of the left and to the absence of a rightist equivalent of the Autonomy. The court record of the trials against rightist extremists shows that, more often than not, the same individuals tend to revolve around the various neo-Fascist organizations, the most dangerous of which merely discard old names for new ones or simultaneously operate under several names. For example, New Order became Black Order, which in term gave life to the Armed Revolutionary Nuclei (NAR). The latter have also carried out terrorist attacks under the name of Popular Revolutionary Movement (MRP).

The targeting methodology of the neo-Fascist terrorist groups is neither as far-ranging nor as selective as that of their Communist counterpart.

Rightist terrorist practices of the late 1960's and early to mid 1970's are conventionally termed "blind," because of a propensity at that time for the indiscriminate use of explosive devices even in public places and on public conveyances. These actions, perpetrated

[53] Supra note 28, p. 15.

by such groups as the Armed Revolutionary Movement, the Mussolini Action Squads, and Black Order, were not always followed by responsibility claims. Accounts generally attribute the unclaimed massacres of Milan, Brescia, and S. Benedetto di Val di Sambro (see appendix XX) to the right. Responsibility for none of the three has as yet been judicially established, notwithstanding indictments and proceedings at the trial and appellate stages of jurisdiction.

The purpose behind blind attacks was to create panic and, according to many commentators, to cause the adoption of strong measures by the government, including the intervention of the presumably conservative military establishment. In connection with this so-called strategy of tension, accusations and indictments for attempting to stage a coup d'etat have repeatedly been brought against political, military, and intelligence figures, as well as private citizens. Except for the conviction of minor elements—primarily private citizens whose potential for undertaking a coup d'etat is highly questionable—no judicial or parliamentary findings have established governmental, military, police, or intelligence involvement at either the planning or execution levels.

Since the late 1970's, the rightist targeting practices have generally conformed to the leftist model by becoming more selective in their objectives, by expanding on the use of firearms, and by claiming responsibility for their actions more routinely.[54] However, the types of targets, especially the human ones, remain comparatively few: lower ranking members of law enforcement agencies, magistrates involved in terrorism-of-the-right investigations, individuals branded as traitors to the cause, and, of course, traditional leftist adversaries.

The new approach basically coincides with the appearance on the scene of the NAR, whose modus operandi includes ambush attacks and raids perpetrated with firearms and occasionally with grenades, under their own name (see appendix XIV), and the detonation of explosives principally against governmental buildings under the name of the MRP. The unexpected and unclaimed bombing, in August of 1980, of the Bologna Railroad Station with the attendant massacre of ordinary citizens (see appendix XX) has been blamed on the right. It still remains to be proven that this was in fact a neo-Fascist action; but, should conclusive evidence emerge, its perpetration would be indicative of an isolated return to blind targeting, since no similar terrorist crimes have since been committed by the right.

In recent years, terrorists of neo-Fascist inspiration have also begun to emulate leftist practices in the prison environment by executing traitors or otherwise creating ferment among inmates. At no time, instead, has any neo-Fascist terrorist group been able to stage a political kidnaping. The only two known instances of rightist abductions were fund-raising ventures. One was carried out by the Revolutionary Action Movement (see appendix XV), while the other was commissioned by rightist extremists and perpetrated by common criminals. Neither was accompanied by a responsibility claim. Moreover, both terrorist right and left traditionally resort to

[54] But, as opposed to leftist responsibility claims, which usually entail a leaflet, the rightist ones frequently take the form of a mere telephone call to the media.

various types of nonpolitical crimes for procurement considerations; however, neo-Fascist elements appear more prone to use the proceeds to improve their life style rather than to enhance the cause.

Press accounts have hypothesized terrorist links between groups professing a Marxist-Leninist ideology and neo-Fascist organizations. Whereas there are, to date, no reliable reports to substantiate the existence of "red-black cells," as they have been colorfully termed, evidence has recently emerged regarding what might be called a tacit nonbelligerence pact between the two ideological components.

If followed by operational developments, the above-mentioned pact might constitute an initial step toward a plan conceptualized in the late 1960's by rightist extremist Franco Freda to combine the revolutionary efforts of the right and of the left into a military strategy. Freda's design, formerly referred to in the media as "Nazi-Maoism," was subsequently espoused by Professors Claudio Mutti and Paolo Signorelli, the two best known ideologues of rightist extremism.

With respect to the terrorist right in particular, it is important not to lose sight of the distinction between political violence, which is not necessarily perpetrated through clandestine structures, and terrorism which, by current definition or connotation, always is. The Italian extreme right has frequently resorted to open violence—in the form of provocative or retaliatory clashes with political adversaries—before as well as after the outburst of contemporary terrorism in the late 1960's. However, that practice is not part of the terrorist phenomenon. It is also worth noting that open clashes of the traditional type have become rather sporadic of late.

4. International connections

Public knowledge of past as well as current police and judicial investigations into rightist extremism would indicate that the international links of the terrorist right substantially entail asylum extended to its militants through the years by sympathetic elements in West European, South African, and principally, Latin American countries. At the same time, a number of weapons and explosive devices used by neo-Fascist extremists originate outside Italian borders. Lastly, the judiciary has occasionally proceeded to investigate foreign nationals suspected of joint operations with domestic elements on Italian soil, but no conclusive evidence has surfaced to date.

At the press level, there are reports to the effect that terrorists of the left as well as of the right have been indiscriminately trained in Libya. One such training site, code-named "Zujur," is allegedly located near Bengasi. Moreover, a diary kept by jailed rightist terrorist Mario Tuti reportedly refers to Libyan aid. Other media accounts claim that Italian neo-Fascist extremists are utilized by Latin American military regimes as hired killers to track down political dissidents and refugees on the South American continent and elsewhere.

D. ANARCHIST COMPONENT

1. Background, ideology, and objectives

Anarchist political violence, in its overt and clandestine manifestations, precedes by several decades comparable practices adopted by organizations or groupings of Communist or neo-Fascist inspiration.

In fact, even the revolutionary terminology used by Italy's most famous anarchist, Errico Malatesta, who was Bakunin's favorite disciple, recurs with slight variations in the language of contemporary extremists and terrorists of Communist persuasion. Malatesta used to speak in terms of "permanent revolution," "continuous war against established organizations," and "anarchist communism."

Traditionally, the targeting patterns of the anarchists—be they lone actors or small aggregations—entail both the selective and blind varieties. Two examples are most significant. On July 29, 1900, as he was returning from a gymnastics competition in Monza, King Umberto I of Italy was assassinated by anarchist Gaetano Bresci, who fired two pistol shots at close range. On March 18, 1921, a bomb planted by three anarchists exploded in the Kursaal Diana Theater of Milan causing 21 deaths and 100 injuries. The purpose of this act was to avenge an alleged miscarriage of justice suffered by the renowned Malatesta.

From Malatesta's days (1853–1932) to the present, the objective of the anarchists remains the destruction of established order at every level insofar as considered oppressive. Traditionally the anarchist ideology has not precluded collaboration with political forces connected to Marxist or labor union goals. This less-than-recent attitude explains current tolerance of Communist doctrines by anarchist groups and their minority presence in revolutionary groups of various ideologies. For these reasons, anarchist individuals and formations that resort to terrorist actions are for simplicity's sake generally listed as part of the terrorist left.

2. Composition, structure, and dynamics

The numerical strength of the anarchist component is minimal. Few, indeed, are also the anarchist terrorist organizations (see appendix V). Yet, their deep-rooted traditions and potential for physical harm and material damage cannot be underestimated (see appendix XVI).

The anarchist group that has towered over the rest in recent years is the now practically defunct Revolutionary Action (Azione Rivoluzionaria—AR), whose appearance on the scene took place in 1976–77. Characterized as a band consisting of anarchists, terrorists of the left, and common criminals, its original inspiration was simply anarchist, as stated in the organizational Charter, which added that "the affinity of our cultural experience can be defined as anarchist-Communist."[55] The self-attributed role of AR is "to wage the armed struggle for a society of the free and the equal."[56]

Apart from revenue-raising ventures, its actions are rather selective (see appendix XVI). The medical officer of the Pisa prison who

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[55] L'Espresso, May 11, 1980, p. 8 (Rome).
[56] Corriere della Sera, Sept. 20, 1977, p. 7 (Milan).

had treated anarchist Franco Serantini was wounded by AR because the latter died while in custody after a street clash with the police. In claiming responsibility for this action, AR called it "a settlement of an old account that weighed on the conscience of the anarchists." [57] The wounding of journalist Nino Ferrero of L'Unita, the official daily of the Italian Communist Party (PCI), was explained with the words "AR hereby punishes a bastard who is at the service of the regime," [58] an obvious allusion to PCI endeavors toward participation in the government.

The reputed historic leader of AR is the late Gianfranco Faina, a former professor of political doctrines at the University of Genoa. Faina's political background includes active participation in the PCI's youth organization; authorship of articles for Classe Operaia (Working Class); conceptualizing together with the aforementioned Toni Negri of AUTOP the publication Quaderni Rossi (Red Notebooks); authorship of a book titled "A Ray of Light in the Darkness," dedicated to Ulrike Meinhof of the Baader-Meinhof gang; organizing a committee for the defense of the above-discussed October XXII Circle; and founding the Ludd Circle.

In addition to the various links entertained by Faina himself, press accounts have frequently made reference to AR's organizational contacts with the quarterly Anarchismo, whose offices reportedly move with frequency from city to city.

A forthcoming retrial of Pietro Valpreda of the anarchist March 22d Circle (not to be confused with the October XXII Circle) and of rightist extremists Franco Freda and Giovanni Ventura, all three of whom must answer once again for the Milan massacre of 1969 (see appendix XX), might finally establish the matter and extent of links between anarchists and neo-Fascists.

An indication of surviving anarchist sentiment in Italy may be the proposal made in late 1981 by various anarchist groups of presumably non-terrorist persuasion to erect a statue in the memory of Gaetano Bresci, the assassin of King Umberto I. The selected location is the city of Carrara, which is the traditional center of the Italian anarchist movement.

3. International connections

Although anarchist terrorist circles traditionally entertain international links (e.g., the assassination of King Umberto I was discussed and planned by Bresci with fellow anarchists in Patterson, New Jersey), recent nondomestic contacts appear to have been maintained principally by AR. The pertinent levels of linkage are nonetheless several.

Chilean refugee Aldo Ernesto Marin Pinones, who has spent over 1 year in Cuba before arriving in Italy as a political exile, accidently blew himself up in Turin in August of 1977, while campaigning in the ranks of AR. His roommate, Juan Teofilo Paillacar Soto, another Chilean refugee with a Cuban background and on the Italian police wanted list, was apprehended in Rome in April of 1979, as he attempted to resist arrest with a 44 magnum revolver. In February of 1979, AR members Rocco Martino and Carmela Pane were

[57] Supra note 55.
[58] Supra note 56.

arrested together with German extremists Rudolph Piroch and Johanna Hartwig in Parma while transporting explosives in a vehicle. In April of 1978, AR militant Enrico Paghera was apprehended in Lucca together with three fellow nationals and one Spaniard. The police found a Palestinian training camp map in Paghera's pockets. Paghera, who later repented, has testified regarding joint Italian-German terrorist plans to abduct the Archbishop of Florance and contacts with Libyan elements. The press finally reported that SISMI, one of the two present Italian intelligence services, identified a mobile training unit consisting of Chilean refugees and Mexican extremists in contact with AR and PL in November of 1979.

E. SEPARATIST COMPONENT

Separatist organizations, whose extremist fringes have from time to time resorted to violence since World War II, include those active in the islands of Sicily and Sardinia and in the German-speaking South Tyrol area of the region of Trentino-Alto Adige, which borders with Austria. In recent years, however, only Sardinian and South Tyrolean separatists occasionally create law enforcement problems. Sicilian separatist trends practically disappeared in the late 1940's.

1. Sardinia

Background, ideology, and objectives.—The island of Sardinia, which is one of Italy's 20 regions, possesses distinctive and deep-rooted sociological traditions. Sardinian itself is considered to be a separate language rather than a mere Italian dialect. In a population consisting of 1,601,000 inhabitants, approximately two-thirds, regardless of social or economic standing, speak the language of the island as a matter of custom. Sardinian, nevertheless, is subdivided into three linguistic branches of its own: Campidanese (spoken in southern Sardinia, Cagliari, and Oristano, by at least 550,000 individuals); Lugodorese Barbaricino (spoken by at least 370,000 individuals); and Gallurese (spoken by no more than 60,000 Sardinians).[59]

Of Italy's 20 regions, 5, including Sardinia, enjoy a special charter as opposed to the ordinary charter of the remaining 15. Special charter status affords the region a vast degree of autonomy obviously short of sovereignty and independence. This status is not considered sufficient by an articulate minority of the population, which has founded a number of independence movements that are usually legal. Since December of 1981, the Sardinian Action Party (Partito Sardo d'Azione—PSd'A), the only local party ever represented in Italy's national Parliament, has made the island's independence part of its platform. According to the resolution of the 1981 party congress, the next step following independence would entail federating with Italy or even with other European or Mediterranean states.

[59] See Panorama, Apr. 6, 1981, p. 84 (Milan); and Corriere della Sera, Apr. 21, 1981, p. 6 (Milan).

Whereas such radical aspirations enjoy a comparatively limited following, other initiatives have obtained an enthusiastic backing. For example, in April of 1981—before the December PSd'A congress—the Regional Council passed a regional, as opposed to national, law making Sardinian along with Italian one of the two official languages of the Island. Not all five special charter regions have been granted bilingualism prerogatives by the Italian central government. Apart from cultural consideration, it was argued that the recognition of bilingualism would serve as a vehicle for the many Sardinian-speaking shepherds and farmers to have a voice in agrarian reforms.

To the purely sociological and linguistic aspects of the regional problem should be added the economic malaise caused by unemployment and underdevelopment. This combination of cultural and material aspirations helps explain not only extremist tendencies to rebel against the alleged colonial status of the island, but also the frequent merger of separatist goals with Communist-inspired class-struggle orientations.

Composition, structure, and dynamics.—Appendix VI lists a number of formations that have claimed responsibility for terrorist actions in Sardinia. Such actions are usually minor ones causing, at worst, damage to governmental property or national concerns (as opposed to local ones) through the detonation of explosives.

The only separatist terrorist group that has displayed some degree of organization and has used both explosives and firearms as a matter of standard procedure is Red Barbagia (Barbagia Rossa). This group made its debut in 1978 with a series of attacks on military and police installations and raids on official archives. Its more menacing actions are listed in appendix XVII.

The full political coloration of Red Barbagia and of the other terrorist organizations operating in Sardinia is difficult to assess, since they frequently combine separatist and Communist aspirations, as their names suggest (see appendix VI). In the late 1960's, the aforementioned millionaire, publisher, and Communist idealogue, Giangiacomo Feltrinelli, attempted to organize an armed independence movement in Sardinia by offering to finance a local bandit by the name of Graziano Mesina. Interestingly enough, Feltrinelli's executive officer in the above-discussed Partisan Action Groups (GAP) was another Sardinian by the name of Giuseppe Saba. Nearly a decade later, the BR, according to extensive evidence including the confessions of red brigadist Antonio Savasta, decided to expand to Sardinia and developed operational and logistical links with Red Barbagia.

Reportedly, Red Barbagia became for some time the BR's proxy for the conduct of terrorist activity on the island. A number of factors account for Sardinia's importance to the BR. The geography of the island makes it a desirable location for stockpiling weapons, and at least one such depot was set up there by the BR. The presence of maximum security prisons inevitably attracted the BR, as captured plans to organize escapes indicate. And, not least, the NATO installations in Sardinia represent lucrative targets.

Besides the support offered to separatist violence by Communist organizations having by far broader aims and local elements obsessed by an urge for independence—Sardinian nationalists who

fast in jails, university professors dressed in the local garb who conduct doctoral dissertations discussions in the local language, and witnesses who refuse to testify in Italian before magistrates—revolutionary separatism is potentially nourished by a tradition of rural banditry which specializes in abductions for ransom. The court record of recent trials against kidnapers reflects links between Sardinian separatism and common crime. In this connection, it might be noted that Red Barbagia itself has drawn manpower from separatist extremists, Communist elements, and Sardinian bandits.

International connections.—Media accounts of ongoing judicial investigations state that in 1981 Sardinian separatists established contact with a Libyan emissary by the name of Ageli Mehemmed Tabet, who offered assistance to the Sardinian Independence Front on condition that the Front infiltrate the above-mentioned PSd'A and demonstrate to be militarily efficient. The contact was arranged in the Sicilian city of Catania by attorney Michele Papa, Libya's principal agent of influence in Sicily. Libyan willingness to provide aid reportedly explains why the 1981 PSd'A party platform included plans for federating an independent Sardinia with Mediterranean states. The Libyan connection had made the headlines once before in 1975, when an Italian intelligence document was allegedly acquired by the press. This memo stated that a member of Parliament from Sardinia by the name of Columbu was in contact with Qaddafi's agents.[60]

2. Trentino-Alto Adige (South Tyrol)

Background, ideology, objectives.—Trentino-Alto Adige is another of Italy's five special charter regions. It became an integral part of Italian territory in 1918, following World War I, Italy's fourth and final War of Independence against Austria. South Tyrol, whose population is predominantly of German ethnic origin, corresponds to the Alto Adige area of the region. The special charter was granted in 1948 in deference to the Germanic elements of the population and calls for the application of the principles of ethnic proportionality and bilingualism. While the full implementation of the special charter has suffered delays, the predominantly German-ethnic province of Bolzano has nevertheless enjoyed a great degree of autonomy. The other province of the region is Trento, and its ethnic stock is predominantly Italian.

From time to time, Germanic elements desirous of complete independence, reunification with Austria, or a merger with the Austrian-held portion of Tyrol as a first step toward formation of an all Tyrolean state, have resorted to terrorist practices. Particularly violent was the period 1956–67. The separatists' actions entailed over 300 bombings of power lines, railroad stations and tracks, newly built low-income housing, army installations, and patriotic monuments commemorative of World War I, as well as some 30 fire engagements with police and military units. The total number of casualties during the 11-year period amounts to 22 victims.[61] Re-

[60] See, in particular, La Repubblica, Dec. 5/6, 1982, p. 10 (Rome), and L'Espresso, Dec. 19, 1982, p. 24 (Rome).

[61] For background and statistics, see R. Cajoli, "Alto Adige addio," Edizioni del Borghese, Milan, 1967; and M. Ferrandi, "L'Alto Adige nella storia," Calliano, Trento, 1972.

sponsibility for most of these actions was claimed by an organization by the name of Befreiungsausschuss Suedtirol.

Composition, structure, and dynamics.—The recrudescence of the terrorist phenomenon has been registered since the fall of 1978; however, its more recent proportions do not compare to the period 1956–67, since no fatalities have been recorded to date. Paternity for the new bombing attacks has been claimed by an organization called Tirol. This organization enjoys the moral and, by many accounts, the material support of Heimatbund, a league founded by Germanic extremists who served terms in Italian prisons, because of crimes committed during the earlier period of terrorist violence.

In addition to the same type of facilities selected earlier on by Befreiungsausschuss Suedtirol, Tirol now targets private vehicles belonging to police personnel and immigrant workers from southern Italy. In some of the leaflets claiming responsibility for these actions, the separatists have compared their status to that of the Palestinians. Whereas during the period 1956–67 a few South Tyrol-related actions were carried out in Rome by terrorist elements, the current violent protest appears to be restricted to the local area. Moreover, while foreign Germanic elements were suspected of perpetrating part of the crimes of the earlier era, the few dozens carried out between 1978 and 1982 are believed to be the exclusive work of local German ethnics.

According to a 1979 census, the ratio between the two ethnic groups in the area roughly amounts to 250,000 German speakers as opposed to 140,000 Italian speakers. The figures of a late 1982 census are expected to show an increase of approximately 5 percent in favor of the German ethnics.

International connections.—South Tyrolean Germanic extremists active in Trentino-Alto Adige have traditionally enjoyed the support of kindred elements in Austria and Bavaria. To date, this support has entailed safehaven, when tracked by the Italian police authorities, and logistical support in the form of explosive devices and propaganda material printed in German, particularly in Gothic letters. Reportedly, Italian intelligence retaliated with clandestine explosions in Vienna and Innsbruck during the earlier South Tyrolean terrorist phase.[62] But even in recent years, there have been problems between Italy, on the one hand, and Austria and the Federal Republic of Germany on the other, because of nonrecognition of Italian sentences against terrorists who have escaped to, or reside in those countries.[63]

Yet, the most disquieting external interference with the South Tyrolean ethnic problem took place in the early 1960's when Czech intelligence, as reported by defector Josef Frolik, surreptitiously supported violent Germanic separatist aspirations by conducting through its own agents dynamite attacks in the area against Italian power lines. The actual purpose was to create ill feelings between Italy and Austria, both of whom are West-oriented.[64]

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[62] See F. Orlando, p. 38, Editoriale Nuova, Milan, 1978, p. 11.
[63] See Panorama, Oct. 19, 1981, p. 123 (Milan); and La Repubblica, Jan. 15, 1983, p. 11 (Rome).
[64] J. Frolik, "The Frolik Defection," Lee Cooper, London, 1975, pp. 59–60.

F. NATIONALISTIC/COUNTERSEPARATIST COMPONENT

Organizations that militate within this component are motivated by a nationalistic reaction against separatist movements or situations perceived as menacing to the integrity of the national territory. In this sense, they are unquestionably conservative and their violent aims and practices might to a degree be equated to those of the neo-Fascist extremists. However, notwithstanding the prevailing tendency to classify both this component and the neo-Fascist one under the rightist heading, the relative objectives are qualitatively different. Moreover, there are no reliable indicators of stable operational links between the two.

Appendix VII lists various organizations responsible for terrorist actions perpetrated in the name of this form of nationalistic fervor. By every indication, they are present only in the above-discussed South Tyrol and in the province of Trieste, which borders with Yugoslavia.

The groupings active in South Tyrol are believed to constitute a single organization that operates under different names. They made their appearance on the scene in the fall of 1979, 1 year after the recrudescence of Germanic terrorist activities. The tactics of these nationalistic extremists, which to date have caused only material damage, mostly entail retaliatory bombing attacks against the private property of local Germanic ethnics and of German/Austrian visitors, as well as against South Tyrolean patriotic monuments. Tourist structures are also a favorite target in order to curtail the tourist influx from Germany and Austria in this area which is attractive to tourists. Moreover, on at least two occasions, they have injected poison into a small number of apples within the still unpicked crop to create and spread panic. In their written communiques, they frequently honor the memory of Italian policemen and soldiers murdered by South Tyrolean terrorists during the period 1956-67.

Italian governmental offices in the province of Bolzano have not been immune from these nationalistic/counterseparatist terrorist attacks. Such targetings are intended to demonstrate the displeasure of these militants with what they perceive to be a weak governmental posture vis-a-vis the German ethnics.

Analogous motivations have moved Italian nationalistic extremists to detonate explosive devices against governmental office buildings in Trieste. Their protest is against the agreements with Yugoslavia that constitute a renunciation of Italian territory in favor of that country with negative results for both Italian patriotic feelings and economic interests.

G. ECOLOGICAL COMPONENT

To date, only three formations of ecological inspiration have claimed responsibility for terrorist actions, the destructive nature of which was fortunately negligible (see appendix VIII). These groups—or similar ones that might emerge—are nonetheless a potential menace, since preparations are currently underway in Comiso, Sicily, to host elements of NATO's modernized Theater Nuclear Force on a stable basis (TNF).

As experience in other countries teaches, ecological groups are frequently connected to pacifist movements or organizations that preach and practice civil disobedience of the law in the name of peace. During a recent interview, the internationally famous Italian writer and pacifist exponent, Alberto Moravia, advocated the "transformation of pacifism into a large political movement, that is, a force capable of influencing, blackmailing governments. . . ." In response to a query regarding the modalities to be pursued, he replied, "With all legal means and, if the governments will use force to oppose pacifism, with illegal ones." [65]

Moreover, ecological/pacifist fervor is known to have given way to violence and has caused considerable damage. For example, on January 19, 1982, in Grenoble, France, a group of self-styled ecologists and pacifists fired five rockets with a Soviet-made weapon against the construction site of a nuclear breeder reactor. While nothing comparable has as yet occurred in Italy, the imitative factor cannot be discounted in the light of terrorist practices of other ideologically motivated organizations. It suffices to recall the similarities between the Schleyer and Moro abductions, perpetrated by organizations of different nationalities, but of the same ideology in Germany and Italy respectively.

Finally, the ecological and pacifist movements are open to exploitation and infiltration by domestic as well as foreign subversive/terrorist elements. The Red Brigades themselves repeatedly referred to the installation of missile bases on the national territory as an act of war in the communiques issued during the Dozier captivity and subsequently declared their intention to participate in the mass movement for disarmament. In this connection, it is interesting to note that red brigadist Francesco Varanese, arrested in May of 1982, had requested to be exempted from military service because of his moral commitment as a conscientious objector.

Of no lesser importance is the foreign interest in the Italian ecological/pacifist movement. Roland Vogt, a leader of the German Greens, has stated, "We are now aware that the decisive battle for peace in Europe is being waged here in Comiso." [66] Mr. Vogt has subsequently stated, "We wish to defend ourselves, but with peaceful means, passive ones: for example with sabotage actions." [67] Significantly, at least 11 foreigners have been expelled from Italy and one has been arrested on espionage charges because of pacifist militancy and activities in the proximity of the projected missile site at Comiso. Not least, an organization by the name of Struggle for Peace (Lotta per la Pace), headed by a retired Italian Air Force general, Nino Pasti, a senator elected on the Italian Communist Party ticket and a recognized Soviet agent of influence, is active together with other peace groups in protesting against the facilities at Comiso.

H. FEMINIST COMPONENT

Feminist militants unsatisified with the legal and democratic process have, from time to time, resorted to violent tactics by orga-

[65] L'Espresso, Dec. 12, 1982, p. 23 (Rome).
[66] Il Giornale Nuovo, July 30, 1982, p. 2 (Milan).
[67] Corriere della Sera, Nov. 8, 1982, p. 3 (Milan).

izing presumable ad hoc terrorist formations. These groupings, which are listed in appendix IX, have caused damage to property only. In so far as their objectives are seen as connected to liberal/progressive platforms, violent feminist bands are usually classified as part of the terrorist left. It might be noted, however, that they represent an anomaly with respect to the structure and dynamics of the Communist-inspired terrorist organizations, since the latter's standard procedure entails actions perpetrated by commando-type units comprised of both male and female personnel.

I. INTERNATIONALIST COMPONENT

Organizations classifiable under this heading virtually constitute a terrorist category whose aims run parallel to those of the Communist component.

Both components are inspired by Marxist-Leninist doctrines. Moreover, their ranks are most frequently made up of Italian extremists. What distinguishes one from the other is the nationality of their targets. As a rule subject to infrequent exceptions, the organizations belonging to the Communist component have targeted domestic victims and property. The internationalist formations, on the other hand, concentrate on foreign targets located in Italy.

In so doing, they express their commitment to proletarian internationalism or their solidarity with specific causes unrelated to the domestic scene, as the names they use clearly indicate. Significantly, standard targets are embassies, consulates, and representative offices of foreign private concerns. Likewise, the timing of these terrorists attacks, which usually entail the detonation of explosive devices, is in relation to a foreign event.

The names under which these presumably occasional bands have operated are listed in appendix X. Human injuries caused by them until now are limited, as reflected in appendix XVIII. It cannot be denied that in some cases these groupings have operational, as opposed to merely ideological, links with organizations or elements of the Communist components, e.g., the BR, PL, or AUTOP.

J. TRANSNATIONAL COMPONENT

This component includes foreign organizations and/or agents of foreign governments that operate from time to time on Italian territory against non-Italian targets for purposes unrelated to Italy. The choice of Italian soil is largely attributable in most instances to the country's geographic position at the center of the Mediterranean thus linking three continents.

1. Armenian elements

Armenian terrorist organizations have been active in the Italian cities of Rome and Milan since 1977. They have targeted Turkish diplomats with firearms and centrally located representative offices of Turkish and other non-Italian airlines and tourist agencies with explosive devices.

Appendix XI lists the names under which these Armenian elements have claimed responsibility for their actions. The names used are indicative of two goals: the liberation of Armenia from Turkey and vengeance for the Armenian genocide. It is believed,

however, that the same individuals are behind the variously named organizations. Responsibility for the majority of their actions is often claimed by an English-speaking telephone caller who contacts the Rome offices of Reuter, the Associated Press, and Agence France Presse. He customarily protests against Turkish fascists and the support allegedly provided to them by the country whose facilities have been attacked. Unfortunately, these actions have caused the injury of innocent Italian bystanders.

The most significant Armenian terrorist actions are listed in appendix XIX. Particularly disconcerting is the two-phase bombing technique frequently employed. The explosions are detonated at intervals spaced several minutes apart. Those who are present at, or called to, the scene after the first explosion are potential victims of the second. The presence of Armenian communities in Milan, Venice, and Rome has led the police to investigate in that direction as well, but no evidence of local involvement in, or support for these terrorist actions, has surfaced.

2. Libyan elements

Libyan expatriates residing in Rome or Milan have frequently been targeted by hit-squads made up of fellow nationals. Some attacks have been occasioned by a refusal to return to Libya with their wealth. Appendix XIX lists seven significant cases of this nature that occurred between March 21 and June 11, 1980. On other occasions, Libyan nationals have been attacked for unknown reasons while transiting through Rome's international airport (see appendix XIX).

In nearly all cases, the victims were assaulted with firearms. Among those arrested, one has identified himself as a Qaddafi guerrilla. Press accounts further point to the Libyan Consulate in Palermo as the operational base where these attacks are planned and commissioned.

Other media reports indicate that, in October of 1981, the U.S. Ambassador to Italy, Maxwell M. Rabb, was the intended victim of a Libyan assassination plot discovered by Italian security, but no details of the pertinent operational plan have been disclosed. The reported plot coincided with the aftermath of the Gulf of Sidra incident which forced two U.S. war planes to down two Libyan aircraft.

3. Palestinian elements

As reflected in appendix XIX, Palestinians have been perpetrators as well as the victims of terrorist actions conducted in Italy. In only two of the significant cases recorded by the media has there been a formal responsibility claim. Because of the sporadic and heterogeneous nature of these actions, no patterns are discernable beyond the obvious ambush, raid, and bombing techniques or the circumstantial timeframe with reference to events in the Middle East.

Several Palestinian terrorist actions with potentially disastrous consequences have failed to achieve their ends. Two examples will suffice. In August of 1972, a cassette player filled with explosives was presented as a farewell gift to two English girls who boarded an El Al plane bound for Tel Aviv from Rome's international air-

port. In September of the following year, some Fedayeens were arrested in Ostia while in possession of a Soviet-made missile launcher they intended to use to down an Israeli airplane.

4. Other elements

The above-discussed elements are the ones that perpetrated the most significant terrorist actions on Italian territory since 1968. Many other foreign nationals have used Italian territory for analogous purposes without becoming a comparable menace.

The only incident of significance which does not fall into an easily categorizable transnational operation relates to the attempt on the life of Pope John Paul II in Saint Peter's Square by Turkish national Mehmet Ali Agca on May 13, 1981.

Depending on his multiple positions and roles, the Pope can be regarded as a domestic target or as a foreign one. In his capacity as Bishop of Rome and Primate of Italy, he is unquestionably an Italian figure. As monarch of the State of the Vatican City, he is the head of a foreign state. As Supreme Pontiff of the Roman Catholic Church, he is an international figure with broad following and influence. Moreover, in the specific case of John Paul II, his Polish nationality and continuing ties with his country of birth and past religious ministry add to the nature of the victim and could be indicative of the political beneficiaries of his elimination.

Agca, the would-be-assassin, fired two pistol shots at the Pope and seriously wounded him. The assailant was immediately apprehended, tried before an Italian court (pursuant to the Agreement and Concordat of 1929 between Italy and the Vatican City State), and sentenced to life imprisonment. Subsequent to the conclusion of the trial, the judiciary, the police, and the intelligence services conducted further investigations into possible accomplices. Agca himself, after several months of imprisonment, reportedly decided to cooperate with the Italian authorities.

The combined reports of the Italian Ministers of Justice, Interior, Defense, and Foreign Affairs before the Parliament [68] reflect that, pursuant to Agca's detailed statements and photographic identifications, the office of the prosecutor indicted as accessories in the attempt on the life of the Pontiff a number of Turkish nationals: Bagci Omer, Musa Cerdar Celebi, Celik Oral, and Bekir Celenk. Bulgarian nationals Ayvazov Todor Stoyanov, Vassilev Jelio Kolev, and Antonov Serguey Ivanov were also implicated. Ayvazov and Vassilev, who are no longer in Italy, were assigned to the Bulgarian Embassy in Rome. Antonov, the head of the Balkan Air airport office, was arrested on November 25, 1982.

Agca's extensive travels before the assassination attempt include a sojourn of 50 days in Bulgaria from mid-July to the end of August of 1980. Moreover, as reported to the Parliament by the Defense Minister, the same Bulgarian radio signal anomalies monitored by the Italian military intelligence service (SISMI) during the Dozier captivity were also noted within the timeframe of the attempt on the Pope's life.

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[68] Supra note 48.

Again, because of the secrecy of the judicial investigation, the nature and the extent of additional information collected by the office of the prosecutor remains unpublished at this writing.

PART II. THE COUNTERTERRORIST RESPONSE

A. LEGISLATION

The Criminal Code of 1930 does not define terrorism. A first reference to this political phenomenon was introduced immediately after the abduction of Aldo Moro by Law Decree No. 59 of March 21, 1978—an emergency measure formalized by Law No. 191 of May 18, 1978—which amended the Criminal Code by increasing the penalties for kidnapings motivated by "terrorism or subversion of the democratic order." These enactments also empowered law enforcement agencies to detain anyone who refuses to identify himself; relaxed the existing strict judicial controls over police wiretapping operations in cases of emergency; and set forth a term of 48 hours within which a landlord, one transferring real estate, and a host must give appropriate notice to the police authorities.

Additional antiterrorist measures were adopted by Law Decree No. 625 of December 15, 1979, which was converted into law by Law No. 15 of February 6, 1980. This legislation amended the Criminal Code to include "attempts committed for purposes of terrorism or subversion of the democratic order" and "conspiracy for purposes of terrorism or subversion of the democratic order." Moreover, the penalty for all terrorism-related crimes was increased by one-half. The following provisions are likewise part of said antiterrorist legislation:

(1) provisional police apprehension of suspects;
(2) mandatory arrest warrants for terrorist crimes;
(3) extension of pretrial confinement limitations;
(4) immediate emergency search of realty or entire blocks of realty in areas where someone wanted for terrorist crimes is justifiably believed to be hiding;
(5) mandatory identification for banking transactions in excess of Italian lire 20 million; and
(6) reduced sentences for terrorists who voluntarily mitigate the consequences of such criminal conduct and/or aid police and judicial investigations.

The last of these provisions was elaborated upon in detail by Law No. 304 of May 29, 1982, which affords varying degrees of clemency to repentant terrorists depending upon the significance of their contributions in the state's efforts to counter terrorism. The ultimate deadline for terrorists wishing to take advantage of this measure was January 31, 1983.

In order to facilitate and enhance coordination and cooperation among Italy's three major police agencies, Law Decree No. 626 of December 19, 1979—converted into law by Law No. 23 of February 11, 1979—set up the National Committee for Public Order and Security within the Interior Ministry. It is chaired by the Interior Minister, and its statutory members are an undersecretary appointed by the minister, the chief of police, and the commanding generals of both the Carabinieri and the Finance Guard.

Although not an antiterrorist measure in the strict sense, another contribution to countering terrorism was made by Law No. 121 of April 1, 1981, on the New Organization of the Administration of Public Security, which provides, among other things, for the establishment of a centralized data bank within the Interior Ministry, under the supervision of the parliamentary oversight committee on intelligence and security.

Finally, pursuant to Law No. 597 of November 23, 1979, a parliamentary committee is making an inquiry into the Aldo Moro affair and terrorism in Italy. The scope of the parliamentary investigation is obviously broader than the ones conducted at the police and judicial levels. Moreover, the specific parliamentary objective is to collect information and analyze a national problem as opposed to law enforcement.

B. INTELLIGENCE AND LAW ENFORCEMENT

At this writing, there appears to be a solid consensus that terrorism has been seriously crippled by the confessions of repentant terrorists of both the left and the right. Unquestionably, the clemency measures introduced by the antiterrorism legislation of 1980 and 1982 created favorable conditions for terrorists—motivated by repentance, disillusionment, or opportunism—who decided to cooperate with the police and the judiciary. Interestingly enough, repentance never precedes capture or indictment.

As of Jaunary 29, 1983, 389 repentant terrorists availed themselves of the clemency legislation.[69] Thanks to the confessions of many of them, an unprecedented number of terrorists, safehavens, and weapons have fallen into the hands of the State Police and Carabinieri. Unfortunately, however, these confessions contributed little to enchance previously acquired knowledge of terrorist structures and dynamics, not to speak of disclosures as to the behind-the-scence levels of direction or external support. Moreover, the repentance route seems to have been chosen exclusively by members of the more recent generations of terrorists. Conversely, only two older terrorists disassociated themselves from the terrorist ranks.

For the record, well before the emergence of repentant terrorists, valuable information had been collected and processed by the police forces and intelligence services. Noteworthy successes against terrorism has also been scored at the operational level by both the State Police and the Carabinieri.

In December of 1970, several years before Italian terrorism reached menacing proportions, the Prefect of Milan reported to the Interior Ministry that, in his area of jurisdiction alone, there were 20,000 potential terrorists. In July of 1972, the police superintendent of Milan drew up a more detailed report listing violent extraparliamentary organizations of various ideologies, their numerical composition, and subversive aims. A report of the same year, prepared by the now defunct Confidential Matters Office of the Interior Ministry, provided extensive data on the origin, characteristics, and goals of the Red Brigades.[70] Also in 1972, and again in 1973,

[69] See La Repubblica, Jan. 29, 1983, p. 13 (Rome).

[70] All three Interior Ministry reports appear in Il Borghese, Supplemento, Apr. 16, 1978, pp. 1-16, and Supplemento, Apr. 23, 1978, pp. 18-32 (Rome).

SID, the intelligence service of that period, revealed information regarding terrorist links with the U.S.S.R., Czechoslovakia, and Cuba.[71]

From the operational standpoint, even before the passage of the very first antiterrorism legislation in 1978, terrorist formations such as the October XXII Circle, the Partisan Action Groups (GAP), and the Armed Proletarian Nuclei (NAP) had been eliminated as autonomous units. Almost the entire historic nucleus and a high percentage of the second generation of the Red Brigades had been arrested or killed in action; the self-styled anarchist-Communist Revolutionary Action was close to neutralization; and such rightist extremists as Luigi Concutelli, who murdered Judge Occorsio, had been brought to justice. It was also during the period before special legislation was enacted and before the days when repentant terrorists began to come forward that the Carabinieri successfully infiltrated the Red Brigades with "Brother Machinegun," a former clergyman and Latin American revolutionary by the name of Silvano Girotto, who led them to historic leaders Renato Curcio and Alberto Franceschini. Curcio, who was subsequently freed from an experimental prison by a commando unit of fellow militants, was recaptured by the Carabinieri.

The intelligence and law enforcement operations of those years were rendered all the more difficult by an adverse political climate.[72] The period 1969–75 in particular was marked by strong antilaw enforcement attitudes. For example, when the above-cited Interior Ministry documents were acquired and published by the press shortly after their preparation, the Italian Communist Party (PCI) and the Italian Socialist Party (PSI) branded those who drafted them as provocateurs and even clamored for their resignations. Politicized elements of the judiciary were less then supportive, if not hostile, toward the police. The press was mostly aligned with seemingly liberatarian causes. And, not least, on the pretext of actual and contrived abuses within the intelligence establishment, the institutional activities of that security sector were constantly under attack and their confidentiality was violated at the governmental level.

The massacre of his five-man escort and the abduction of Aldo Moro, followed by his murder 54 days later, marked a turning point with respect to the political response to terrorism. In addition to the legislative innovations discussed above, a number of other measures were adopted.

In August of 1978, the late Carabinieri General Carlo Alberto Dalla Chiesa, a veteran organized-crime and terrorism specialist, was placed in command of a special counterterrorism task force responsible for both intelligence collection and law enforcement. One year later, after a series of successful operations, he was appointed commander of the First Carabinieri Division which has an area of jurisdiction covering northern Italy. Given the intensity of terrorist activity in that area, Dalla Chiesa's appointment was unquestionably meant to have a psychological impact. Another special assign-

[71] Supra notes 39 and 40.

[72] All major problems of this nature, as reported in Italian-language sources, are addressed in detail in the work cited in supra note 26. See in particular pp. 165–175.

ment was entrusted to General Arnaldo Ferrara, former deputy commander of the Carabinieri Corps, who was named counselor of the president of the republic for problems relating to democratic order and security in September of 1978. Since his election in 1978, Sandro Pertini, the President of the Republic, has actively chaired the Superior Council of the Judiciary to solidify judges and prosecutors against both terrorism and the frequently reported ambivalence vis-a-vis this phenomenon on the part of elements of the judiciary.

During the electoral campaign for the parliamentary elections of June 3-4, 1979, military units were posted around public utility plants in order to alleviate the security burden on the police forces and allow them to concentrate their efforts on more sophisticated counterterrorist actions. In December of the same year, specialized law enforcement technocrats Enzo Vicari, Emanuele De Francesco, and Carabinieri General Edoardo Palombi were appointed prefects of Milan, Turin, and Genoa, respectively.[73] In December of 1980, on the occasion of their successful employment against imprisoned terrorists of the left who were holding hostages, it became known that the Carabinieri Corps had formed the Special Intervention Groups (Gruppi Intervento Speciali—GIS). In 1981, key law enforcement figures, including Generals Dalla Chiesa, Umberto Cappuzzo, and De Santis were authorized to grant press and television interviews in an ostensible effort to promote a psychological link between the police forces and the public in general.

At present, there are specialized operational offices tasked with combating subversion, political violence, and terrorism, within the State Police and Carabinieri structures. It might be preliminarily noted that both the State Police and the Carabinieri are under the operational control of the Interior Ministry for public order functions; however, while the State Police is now a totally civilian police force[74] under this Ministry, the Carabinieri are both a military organization and a police force and are part of the national defense establishment headed by the Defense Ministry.

Since 1978, the Central Bureau for General Investigations and Special Operations (Ufficio Centrale per le Indagini Generali e le Operazioni Speciali—UCIGOS) was established within the Interior Ministry.[75] The Bureau coordinates the operations of the counterterrorism offices—manned by State Police personnel—set up within each provincial police headquarters (Questura—the local police organization of the Interior Ministry at the provincial level).[76] In the more important provinces and always in the prov-

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[73] In each province there is a prefect who represents the Interior Ministry and the central government in a variety of administrative matters, including law enforcement. Another provincial official of the Interior Ministry is the police superintendent (Questore), who is subordinate to the prefect and specifically responsible for law enforcement.

[74] The State Police, formerly known as Public Security, has always been an integral element of the Interior establishment. But, before the reform introduced by the above-cited Law No. 121 of 1981, this police force had a militarized status. The reform law also changed its name to State Police and brought about changes in the denomination of the rank structure.

[75] UCIGOS is in fact the descendant of a number of similar central offices that preceded it. Until 1974, there was the above-mentioned Confidential Matters Office (Ufficio Affari Riservati), replaced by the Security Service (Servizio di Sicurezza—S di S), which was in turn supplanted in 1976 by Inspectorate for Anti-Terrorist Action (Ispettorato per l'Azione contro il Terrorismo). Commentators have argued that all of these changes during critical times for law enforcement were counterproductive.

[76] The Questura is headed by the police superintendent (Questore). See supra note 73.

inces that are regional capitals,[77] the counterterrorism office is known as the Division for General Investigations and Special Operations (Divisione per le Investigazioni Generali e le Operazioni Speciali—DIGOS). In the other provinces, obviously the vast majority, it is called Office for General Investigations and Special Operations (Ufficio per le Investigazioni Generali e le Operazioni Speciali—UIGOS).[78]

For purposes of law enforcement, the Carabinieri structural organization is called "territorial." Approximately 80 percent of Carabinieri personnel are assigned to this structure. The entire territorial organization is subordinate to the General Headquarters. The organizational echelons include three divisions (one in the North, Center, and South, respectively) with subordinate brigades, legions, groups, companies, and stations. As a rule subject to few exceptions, there is one legion in every region and one group in every province. Specialized elements of legions and groups are specifically concerned with political crimes and terrorism.

As can best be reconstructed from media reports and unclassified official records (neither of which can be regarded as particularly detailed) a number of sources, procedures, and techniques have been used by law enforcement authorities in combating terrorism.

The most recent is obviously the use of confessions by repentant terrorists. Other sources include paid informers and social deviants who operate on the periphery of subversive circles and can be influenced. Papers seized in captured safehavens and operational bases, but also analyses of documents openly issued by the terrorist organizations themselves, have contributed to law enforcement operations. In some cases, identified and even escaped terrorists were put under surveillance to establish their points of contact. In other instances, marginal subversive elements were used as agents within the terrorist organizations themselves. Operations of this nature, although presumably rare, could be of particular importance because of governmental and parliamentary policies that practically forbid direct infiltration by police or intelligence personnel into terrorist organizations. Also, acquired knowledge of the terrorists' method of operation has apparently led to a number of identifications and arrests.

A continuing problem that at least in part bears upon counterterrorists efforts addresses the functioning of the intelligence services.

The Italian intelligence system was reformed by Law No. 801 of October 24, 1977. A major factor behind the reform were the actual, alleged, or perceived abuses of institutional functions by the directors and other key personnel of the former services, SIFAR (Armed Forces Information Service), in existence from 1949–65, and SID (Defense Information Service), its successor, in existence from 1965–77.

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[77] From an administrative standpoint, the national territory is subdivided into 20 regions, 95 provinces, and several thousand municipalities. The Republic of Italy is a unitary state as opposed to a federal republic.

[78] The DIGOS/UIGOS combines the now defunct Political Office (Ufficio Politico) and the Anti-Terrorism Nucleus (Nucleo Antiterrorismo) of the Questura. The political offices have a long history, while the antiterrorism nuclei were established at the time the S di S was set up. See supra note 75.

The reform introduced four major innovations:

(1) a more stringent supervision of the intelligence and security services by the government (executive cabinet) and, for the first time, oversight by the Parliament;

(2) the separation of intelligence and internal security functions into two services;

(3) an additional separation of intelligence and security functions from law enforcement functions; and

(4) new regulations governing state secrecy.

Of the technical drawbacks caused by the compromises that went into the text of the law because of proverbial ideological differences among the forces that make up parliamentary and governmental majorities in Italy, two tower above the rest. In the first place, the statute vaguely defines the respective responsibilities of the two new organizations: Service for Military Intelligence and Security (Servizio Informazioni Sicurezza Militare—SISMI) and Service for Intelligence and Democratic Security (Servizio Informazioni Sicurezza Democratica—SISDE). Secondly, it bars the two services from employing permanently or occasionally (the language of the statute is open to interpretation and debate in this connection as well) traditional sources of intelligence information including members of parliament; regional, provincial, and municipal councilmen; magistrates (this category includes both judges and prosecutors); clergymen; professional journalists; and individuals whose records do not guarantee fidelity to democratic and institutional principles.[79]

But apart from technical difficulties, the fact remains that ever since the late 1960's the Italian intelligence services have been under attack because of scandals, partisan political accusations, and unenlightened media practices, such as revealing the names of agents. SISMI and SISDE themselves have frequently made the press headlines since 1980. However, of the four major scandals, only one appears to have involved an actual security violation. This case entails the leaking of the confessions of captured red brigadist Patrizio Peci to Il Messaggero of Rome by the deputy director of SISDE.[80]

An unprecedented problem, which is possibly even more disquieting, entails the accusations of torture brought by captured current generation terrorists against the police since the Dozier affair. The charge is that torture took place immediately after the suspects were arrested and while they were still in police custody. These tactics were allegedly used for the purpose of inducing confessions and revelations. Five members of the State Police have been indicted. The trial should determine whether this development constitutes presumably isolated incidents or constitutes a new terrorist attempt to discredit the law enforcement agencies. In any case, the medical authorities have reportedly established that no injuries re-

[79] For a detailed discussion of the Italian intelligence system before and after the reform law, see V.S. Pisano, "A Study of the Restructured Italian Intelligence and Security Services," The Library of Congress, 1978, Washington, DC, and the work cited in supra note 26.

[80] Of the other three, at least two appear to be traditional intelligence operations: Attempting to obtain information and/or collaboration from common crime elements in connection with the BR kidnapings of Cirillo and Dozier (see appendix XII). The third, which still requires clarification, is the matter of membership in an especially secretive masonic lodge by the directors and other functionaries of both services as well as of the Executive Committee on Intelligence and Security (CESIS).

quiring more than 20 days to heal have been suffered by terrorists released from police to judicial custody. Consequently, if any reprehensible prisoner mistreatment took place, it would fall short of physical impairment.

C. PUBLIC OPINION

Public opinion polls consistently reflect a comparatively high degree of concern regarding the terrorist phenomenon by the general population, including those segments that are presumably immune from selective terrorist attacks. Consequently, it has been suggested that a large number of citizens fails to differentiate between political terrorism and violent acts of common criminality which are on the rise in most urban centers.

Moreover, popular rejection of terrorism and sympathy with its victims have frequently been manifested by large crowds participating in funeral rites and dedication ceremonies of memorial busts and plaques on streets and in squares. Considerable generosity has also been displayed on the occasion of collections sponsored by private nonpolitical organizations on behalf of the orphaned dependents of terrorism victims in order to supplement the indemnity provided by the state. Still other demonstrations, whose pertinence is open to debate, include strikes called by the major labor unions in response to the more clamor-inducing terrorist acts, such as the abduction and murder of Aldo Moro.

But beyond private and collective protest entailing sentiments of human solidarity, affirmations of civic-mindedness, or release of emotions, the popular response to terrorism has also taken political forms.

Several candidates in local, regional, and national elections owe their seats at least in part to the fact that they were physically attacked by the terrorist left. Major examples are Christian Democrats Massimo De Carolis in Milan, Publio Fiori in Rome, Enrico Ghio and Fausto Cuocolo in Genoa, and Giovanni Picco in Turin. Analogous significance can be attributed to the casting of the largest number of nominal ballots in favor of Giorgio Almirante in the city of Naples during the regional elections of 1980. Though not a victim of terrorist violence, Almirante is the head of the Italian Social Movement (MSI), which advocates the severest measures against terrorism. His party was successful in collecting over 1 million signatures for the introduction of a bill to have terrorist-infested areas placed under the purview of the Military Code of War with the consequential application of the death penalty.

Not less significant is the overwhelming popular rejection of the proposal put to national referendum, at the initiative of the Radical Party, to abrogate the legislative antiterrorist measures adopted by the above-outlined Law Decree No. 625 of December 15, 1979, and Law No. 15 of February 6, 1980. In the Referendum of May 17, 1981, 85.2 percent of the voters opted for the retention of this legislation. In another referendum, also sponsored by the Radical Party and held on the same day with the intent of abrogating legislation that allows licensed private citizens to carry a pistol or a revolver, 86 percent of the voters expressed themselves in favor of the retention of that private security measure.

With the inherent objective of influencing public opinion, terrorism has been the focus of considerable attention by all of the political parties represented in Parliament, as reflected by party publications, parliamentary debates, interviews granted by leading party representatives, and various party initiatives, including those mentioned above.

The Christian Democratic Party (DC) has repeatedly pointed out its front-line position in combating terrorism. Because of its status as the relative majority party, the DC can credibly allege a predominant role in the passage of recent antiterrorist legislation. Moreover, the Interior Minister post has uninterruptedly been held by a Christian Democrat. But, above all else, the DC can objectively claim, as indeed it does, to be the party most targeted by terrorist violence. On the other hand, it tends to forget not only its weak leadership—albeit conditioned by coalition governments—since the late 1960's, but also its vacillating attitude through the mid-1970's with respect to the political coloration of the terrorist phenomen.[81]

Terrorism has likewise drawn considerable attention from the Italian Communist Party (PCI), Italy's second largest party whose governmental opposition role has been continuous since 1948, except for a brief period in 1976–78. During this 2-year period, the PCI finally conceded the existence of terrorism of the left. However, this belated acknowledgment did not put an end to PCI denunciations of the forces of reaction as ultimately responsible for terrorism—a theory dear to the Soviets. Moreover, in its innovative publications on terrorism of recent years, which address both the leftist and rightist manifestations of the phenomenon, the PCI skeptically puts the word "left" between quotes: terrorism of the right and terrorism of the "left." The party has also conducted opinion polls on the topic of terrorism containing questionnaires worded in such a manner as to elicit answers in accordance with the party's ideology.[82] In conjunction with its post-1977 terrorism research policy, the PCI has repeatedly called for mass mobilization against terrorism. At the same time it has also expelled party members involved in terrorist organizations. This policy, however, is not altogether new, since even in the days of the Red Strike Force, the PCI would officially disclaim any relationship with its armed parallel groups. Finally, the party has supported legislative antiterrorist measures enacted since 1978, fully oblivious of its earlier stances in the mid-1970's against public order legislation and of its past efforts aimed at police disarmament. Despite the PCI's ostensible firmness of recent years against political terrorism of all varieties, indeed few of its militants have been targeted by the terrorist left (see appendices XII, XIII, and XVI).

The smaller parties do not trail far behind the major ones in their interest for the terrorist phenomenon. The Italian Socialist Party (PSI) and the Radical Party have attempted to mediate the release of major BR kidnap victims for asserted humanitarian rea-

[81] This attitude has been summarized by a senior journalist and university professor as follows: " . . . at one time there was only one violent extremism (of the left), then two opposing extremisms (of the left and of the right), then only one (of the right), finally one full extremism (of the right), plus one-half (of the left)." See D. Bartoli, "Gli italiani nella terra di nessuno," Mondadori, Milan, 1976, pp. 189–197.

[82] See Il Tempo, Oct. 31, 1981, p. 24 (Rome).

sons. The PSI has frequently been at odds with the PCI, its one-time ally at the national level, over the hard no-bargain stance adopted by the latter. The PSI and the Italian Social Democratic Party (PSDI) have been perhaps the strongest accusers of Soviet bloc support for terrorism in Italy. In this respect too, the PSI is at odds with the PCI. The Italian Social Movement (MSI), in addition to the death penalty proposal referred to above, has expelled from its ranks individuals involved in terrorist violence and has adopted as one of its campaign slogans: "Against terrorism the barrier is to the Right: Vote Italian Social Movement—National Right." Interestingly enough, however, it sided in practice with the Radical Party during the referendum for the repeal of the terrorism laws, alleging that said legislation is ineffective and limits personal liberties.

For their part, the labor unions, somewhat forgetful of their own violent and violence-inducive role during the "hot autumn" of 1969 and in the years that followed,[83] have been pulling the alarm signal since the beginning of the 1980's with respect to terrorist infiltration of the factories and of the labor unions themselves. Several of their internal circulars provide analyses of terrorist documents in relation to labor and the unions. The leaders of the Italian Union of Labor (UIL), one of Italy's three major unions, have been especially forceful in expressing their concern even before the name of Luigi Scricciolo and his terrorist links, both domestic and foreign, made the headlines.

The highly visible presence of terrorist activity is also responsible for a flourishing literature on the topic, largely during the period 1976-80. Book-length essays and accounts reached their market peak in the aftermath of the Aldo Moro affair. Apart from its actuality, the topic did attract the public interest from the sociological and criminological standpoints.

Far greater profits than those accrueable to the publishing market continue to be made by industries and concerns that specialize in products and services related to private security. However, in the latter case, it is difficult to assess the comparative weight of the terrorist factor as opposed to the common crime factor. They are at any rate concomitant causes.

The combined outburst of political and common criminality has had an enormous impact on the construction and/or importation of steel doors and windows and alarm systems for offices and dwellings, body armor, and armored cars. Moreover, over 400 private security agencies have been formed, approximately 20,000 dogs have been trained as body guards, gun-permit applications are on the rise, and enrollment in martial arts and protective driving courses has increased. Pertinent training not available in Italy is acquired abroad by private citizens with special security needs.

Concluding Remarks

After 15 years of unconventional warfare, several hundred murders, over 1,000 woundings, and considerable damage to property, Italian terrorism, in all of its manifestations, can safely be termed

[83] See works by D. Bartoli and A. Ronchey in supra note 8.

a failure, if its objective was and continues to be the radical uprooting of institutions. In point of fact, its propaganda and tactics have proven to be ill-suited to bring about any kind of political revolution. Moreover, at this writing, civil war is nowhere discernible on the horizon.

If, on the other hand, the objective of the practitioners of terrorism or of possible secret exploiters or supporters—domestic or foreign—was and remains the fostering of confusion, malaise, disunity, and social strife, then Italian terrorism can be regarded as moderately successful.

Various trails have been explored in order to identify a central figure or power center, conventionally denominated "the grand old man," as the brain or patron behind terrorist strategies. Logic would discount that a single person or entity can effectively perform the role of puppeteer of a phenomenon whose dimensions are as vast and diverse as those displayed by Italian terrorism from 1968 through 1982. At the same time, no trace of such a secret potentate has emerged, even in connection with individual organizations or isolated actions, except perhaps for the wealthy and ubiquitous Giangiacomo Feltrinelli, who died in 1972.

Nevertheless, the absence of one or more patrons is not fully convincing, inasmuch as self-financing, coupled with the recorded forms of lateral support, does not appear to be sufficient to account for the nourishment of major organizations such as the Red Brigades for over a decade. Nor is it a conclusive argument that the official terrorist proclamations and the statements of repentant terrorists exclude the presence or interference of secret forces.

Experience teaches that the official proclamations of these organizations are intended to serve revolutionary propaganda purposes and are not conditioned by any commitment to truth. Similarly, the confessions of repentant terrorists on the matter of secret leadership or support are of dubious value. The repentant ones, all of whom belong to the more recent generations, fall within the category of operatives at various levels, but do not combine direct and complete knowledge of the organization—including its developmental stages—in which they participated until they were captured. Moreover, repentance itself is in many cases all too sudden to merit full faith and credit. Finally, key repentant terrorists of both the left and the right continue to express their belief in the ideology that inspired them, while they ostensibly renounce violent means. This latest aspect raises unanswered questions as to whether they may ultimately be protecting someone who could still provide leadership or support for the cause in conjunction with new strategies.

But, should there be no secret supporter at any level, the Italian terrorist experience would assume a substantially more foreboding dimension not only in historical perspective, but also with regard to potential future developments. In essence, this would mean that under given socio-political tensions any group motivated by ideological considerations and bent on resorting to violence has the potential to become for an indefinite period of time a political player and a dispenser of death.

On the positive side, Italian terrorist organizations of all ideologies have suffered unprecedented setbacks throughout 1982, while

terrorist actions have dramatically dwindled during the same year to the point of becoming almost negligible in the first quarter of 1983. Consequently, the surviving assets of the terrorist world must currently be in a deep state of crisis. Whereas any prediction as to future developments is unlikely to graduate beyond the realm of speculation, it must be realistically acknowledged that many a time-tested terrorist model is available for emulation, adaptation, or operational refinement by those who either refute or are disillusioned with the democratic process.

Selected List of Works Consulted

EXPLANATORY NOTE

The books and monographs listed below constitute valuable reference material because of three considerations. Some of them provide extensive coverage of Italian terrorism as known at the time of authorship. Others address specific aspects of the multifaceted terrorist phenomenon. Still others afford interesting analyses.

However, since the contemporary and fluid nature of terrorist practices nearly always cause books and other printed works of some length to become outdated shortly after publication, no source can be realistically expected to replace the systematic reading of dailies and periodicals. For this reason, instead of listing specific articles, the attention of the interested researcher is directed to Italian publications of that nature whose national circulation and editorial policies call for broad and continuing coverage of terrorism.

The documents section is comprised of parliamentary records and debates and unclassified intelligence reports. These sources are worth consulting inasmuch as their contents are rarely fully represented elsewhere.

Regrettably, very few publications that specifically address Italian terrorism have been authored in English. Coverage in that language is nearly always limited to brief and occasional press reports or cursory sections of broader work on terrorism.

1. Books and monographs

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(2) Periodicals.—Il Settimanale (Rome—ceased publication in 1981); L'Espresso (Rome); L'Europeo (Milan); Panorama (Milan).

3. Documents

Atti Parlamentari. Camera dei Deputati. VII Legislatura. Discussioni. Seduta del 19 maggio 1978; seduta del 24 ottobre 1978; seduta del 25 ottobre 1978.
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———. ———. VII Legislatura. Relazione sulla politica informativa e della sicurezza. Semestre 22 novembre 1977–22 maggio 1978; semestre 22 maggio–22 novembre 1978.
———. ———. VIII Legislatura. Relazione sulla politica informativa e della sicurezza. Semestre 22 maggio–22 novembre 1979; semestre 22 novembre 1979–22 maggio 1980; semestre 22 maggio–22 novembre 1980; semestre 22 novembre 1980–22 maggio 1981; semestre 23 maggio–22 novembre 1981; semestre 23 novembre 1981–22 maggio 1982; semestre 23 maggio–22 novembre 1982.
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APPENDIX I

AGGREGATE ANNUAL STATISTICS PERTAINING TO TERRORIST CRIMES

Year	Number of incidents	Year	Number of incidents
1968	147	1976	1,203
1969	398	1977	2,067
1970	363	1978	2,498
1971	514	1979	2,384
1972	580	1980	1,275
1973	422	1981	862
1974	590	1982	628
1975	682		

NOTE.—Figures in the Number of Incidents column reflect individual terrorist actions regardless of single or multiple targets.

APPENDIX II

ANNUAL STATISTICS PERTAINING TO SPECIFIC CATEGORIES OF TERRORIST CRIMES

Year	Murders	Woundings	Abductions
1968	—	—	—
1969	17	96	—
1970	2	3	1
1971	4	14	—
1972	2	11	2
1973	40	73	4
1974	27	166	4
1975	5	19	5
1976	8	11	1
1977	10	45	1
1978	25	74	1
1979	22	149	—
1980	120	288	1
1981	26	71	5
1982	26	85	1

APPENDIX III

TERRORIST/SUBVERSIVE FORMATIONS OF COMMUNIST INSPIRATION

Antifascismo Militante (Militant Anti-Fascism)
Autonomia Operaia (Workers' Autonomy)
Autonomia Operaia per il Comunismo (Workers' Autonomy for Communism)
Avanguardia Comunista (Communist Vanguard)
Azione Combattenti per il Comunismo (Combatants' Action for Communism)
Banda Armata per il Comunismo (Armed Band for Communism)
Bande Proletarie Pendolari (Proletarian Commuters Bands)
Brigate Antifasciste (Anti-Fascist Brigades)
Brigate Armate Comuniste (Armed Communist Brigades)
Brigate Combattenti Proletarie (Combatant Proletarian Brigades)
Brigate Comuniste (Communist Brigades)
Brigate Operaie (Workers' Brigades)
Brigate per il Comunismo (Brigades for Communism)
Brigate Rosse (Red Brigades)
Cellule Combattenti Comuniste (Combatant Communist Cells)
Cellule Comuniste (Communist Cells)
Cellule Comuniste Territoriali (Communist Territorial Cells)
Cellule Rivoluzionarie (Revolutionary Cells)
Circolo XXII Ottobre (October 22 Circle)
Comando Antifascista Armato (Anti-Fascist Armed Command)
Comando Comunista di Contropotere Territoriale (Territorial Counterpower Communist Command)
Comando Comunista Territoriale (Communist Territorial Command)
Comando Rivoluzionario (Revolutionary Command)
Combattenti per il Comunismo (Combatants for Communism)
Comitati Clandestini di Contropotere per la Lotta Rivoluzionaria (Clandestine Counterpower Committees for Revolutionary Struggle)
Comitati Rivoluzionari (Revolutionary Committees)
Comitato di Lotta per il Comunismo (Struggle Committee for Communism)
Comitato di Lotta agli Studi Professionali (Struggle Committee for Professional Education)
Comitato Lotta per la Casa (Struggle Committee for Housing)
Compagne Comuniste Combattenti (Communist Combatant She-Comrades)
Compagni Antifascisti Organizzati (Organized Anti-Fascist Comrades)
Compagni di Lotta Armata per il Comunismo (Armed Struggle Comrades for Communism)
Compagni Organizzati (Organized Comrades)
Compagni Organizzati Contro la Selezione (Organized Comrades Against Selection)
Compagni Organizzati in Nuclei Partigiani (Comrades Organized in Partisan Nuclei)

Compagni Organizzati per il Comunismo (Organized Comrades for Communism)
Compagni Organizzati-Volante Rossa (Organized Comrades-Red Strike Force)
Comunisti Combattenti (Communist Combatants)
Comunisti Organizzati (Organized Communists)
Comunisti Rivoluzionari (Revolutionary Communists)
Contropotere Armato per il Comunismo (Armed Counterpower for Communism)
Contropotere Comunista (Communist Counterpower)
Contropotere Operaio (Workers' Counterpower)
Contropotere Popolare (Popular Counterpower)
Contropotere Proletario (Proletarian Counterpower)
Corpi Liberi-Frazione Combattenti Comunisti (Free Forces—Communist Combatant Faction)
Donne Organizzate Proletarie (Organized Proletarian Women)
Esercito di Liberazione Comunista (Army of Communist Liberation)
Formazioni Combattenti Comuniste (Communist Combatant Formations)
Formazioni Comuniste Organizzate (Organized Communist Formations)
Forze Armate per il Comunismo (Armed Forces for Communism)
Forze Armate Proletarie per il Comunismo (Proletarian Armed Forces for Communism)
Fronte Combattente Comunista (Combatant Communist Front)
Fronte Comunista per il Contropotere (Communist Front for Counterpower)
Fuochi Metropolitani per la Rappresaglia Comunista (Metropolitan Fires for Communist Reprisal)
Gatti Selvaggi (Wild Cats)
Giovani Proletari Organizzati per il Comunismo (Young Proletarians Organized for Communism)
Gioventu Organizzata per il Comunismo (Organized Youth for Communism)
Gioventu Popolare Rivoluzionaria (Revolutionary Popular Youth)
Giustizia Comunista (Communist Justice)
Giustizia Proletaria (Proletarian Justice)
Gruppi Armati Antifascisti (Armed Anti-Fascist Groups)
Gruppi Armati per il Contropotere Territoriale (Armed Groups for Territorial Counterpower)
Gruppi Armati Proletari (Armed Proletarian Groups)
Gruppi di Azione Partigiana (Partisan Action Groups)
Gruppi Comunisti Armati Territoriali (Armed Territorial Communist Groups)
Gruppi Comunisti di Combattimento (Communist Combat Groups)
Gruppi Comunisti Organizzati (Organized Communist Groups)
Gruppi Comunisti per il Contropotere Territoriale (Communist Groups for Territorial Counterpower)
Gruppi Comunisti Proletari (Proletarian Communist Groups)
Gruppi Organizzati per l'Azione Diretta (Organized Groups for Direct Action)
Gruppi Proletari Organizzati (Organized Proletarian Groups)
Gruppi Proletari Organizzati Armati (Organized Armed Proletarian Groups)
Gruppi Rivoluzionari per il Comunismo (Revolutionary Groups for Communism)
Gruppi Territoriali Antifascisti (Anti-Fascist Territorial Groups)
Gruppi Territoriali Comunisti Metropolitani (Communist Metropolitan Territorial Groups)
Gruppi Urbani Popolari (Popular Urban Groups)
Gruppo Armato Comunista (Armed Communist Group)
Gruppo Armato Rivoluzionario (Armed Revolutionary Group)
Gruppo Armato Rivoluzionario per il Comunismo (Armed Revolutionary Group for Communism)
Gruppo Compagni Organizzati per il Comunismo (Group of Organized Comrades for Communism)
Gruppo Comunista Liberazione Carceraria (Communist Group for Prison Liberation)
Gruppo Comunista Territoriale (Communist Territorial Group)
Gruppo Controllo Comunista (Group for Communist Control)
Gruppo Contropotere per il Comunismo (Counterpower Group for Communism)
Gruppo di Azione Proletaria (Proletarian Action Group)
Gruppo di Azione Rivoluzionaria (Revolutionary Action Group)
Gruppo Giovani Proletari dell'Autonomia Diffusa (Group of Diffused Autonomy Young Proletarians)
Gruppo Operai Comunisti Combattenti (Communist Combatant Workers' Group)
Gruppo Popolare Urbano (Popular Urban Group)
Gruppo Proletario (Proletarian Group)
Gruppo Proletario di Guerriglia (Proletarian Guerrilla Group)

[redacted]uppo Proletario per il Comunismo (Proletarian Group for Communism)
Gruppo Rivoluzionario (Revolutionary Group)
Guardia Rivoluzionaria (Revolutionary Guard)
Guardie Comuniste Territoriali (Communist Territorial Guards)
Guerriglia Armata di Lavoratori (Workers' Armed Guerrilla)
Guerriglia Comunista (Communist Guerrilla)
Guerriglia Comunista Combattente (Combatant Communist Guerrilla)
Guerriglia Proletaria (Proletarian Guerrilla)
Guerriglia Proletaria per il Comunismo (Proletarian Guerrilla for Communism)
Guerriglia Rivoluzionaria (Revolutionary Guerrilla)
Guerriglia Rossa (Red Guerrilla)
Guerriglieri Comunisti (Red Guerrilla Fighters)
I Nuovi Partigiani (The New Partisans)
Lotta Armata per il Comunismo (Armed Struggle for Communism)
Lotta Armata per la Rivoluzione (Armed Struggle for Revolution)
Lotta Armata Proletaria (Proletarian Armed Struggle)
Lotta Comunista (Communist Struggle)
Lotta per il Comunismo (Struggle for Communism)
Lotta Rivoluzionaria (Revolutionary Struggle)
Morte al Fascio (Death to the Fasces)
Movimento Comunista Combattente (Communist Combatant Movement)
Movimento Comunista Rivoluzionario (Revolutionary Communist Movement)
Movimento Giovanile Comunista (Communist Youth Movement)
Movimento Popolare di Liberazione (Popular Liberation Movement)
Movimento Proletario Contro il Fascismo (Proletarian Movement Against Fascism)
Movimento Proletario di Resistenza Offensiva (Offensive Resistance Proletarian Movement)
Movimento Proletario Antifascista (Anti-Fascist Proletarian Movement)
Movimento Rivoluzionario di Liberazione (Revolutionary Liberation Movement)
Nuclei Antifascisti (Anti-Fascist Nuclei)
Nuclei Antifascisti Comunisti (Anti-Fascist Communist Nuclei)
Nuclei Antifascisti Territoriali (Territorial Anti-Fascist Nuclei)
Nuclei Armati Comunisti (Communist Armed Nuclei)
Nuclei Armati Combattenti per il Comunismo (Combatant Armed Nuclei for Communism)
Nuclei Armati contro la Repressione (Armed Nuclei Against Repression)
Nuclei Armati Organizzati Comunisti (Communist Organized Armed Nuclei)
Nuclei Armati per il Comunismo (Armed Nuclei for Communism)
Nuclei Armati per il Contropotere (Armed Nuclei for Counterpower)
Nuclei Armati per il Contropotere Popolare (Armed Nuclei for Popular Counterpower)
[redacted]uclei Armati per il Potere Operaio (Armed Nuclei for Workers' Power)
Nuclei Armati Proletari (Armed Proletarian Nuclei)
Nuclei Armati Proletari per il Comunismo (Armed Proletarian Nuclei for Communism)
Nuclei Armati Rossi (Red Armed Nuclei)
Nuclei Armati Territoriali (Armed Territorial Nuclei)
Nuclei Azione Proletaria Armata (Nuclei for Armed Proletarian Action)
Nuclei Azione Proletaria Organizzata (Nuclei for Organized Proletarian Action)
Nuclei Combattenti Comunisti (Communist Combatant Nuclei)
Nuclei Comunisti Armati (Armed Communist Nuclei)
Nuclei Comunisti Contro il Carovita (Communist Nuclei Against the High Cost of Living)
Nuclei Comunisti Organizzati (Organized Communist Nuclei)
Nuclei Comunisti Organizzati per il Contropotere Territoriale (Organized Communist Nuclei for Territorial Counterpower)
Nuclei Comunisti per la Guerriglia Proletaria (Communist Nuclei for Proletarian Guerrilla)
Nuclei Comunisti Territoriali (Communist Territorial Nuclei)
Nuclei Contropotere Proletario (Proletarian Counterpower Nuclei)
Nuclei Contropotere Territoriale (Territorial Counterpower Nuclei)
Nuclei d'Azione Comunisti (Communist Action Nuclei)
Nuclei di Controinformazione Territoriale (Territorial Counterinformation Nuclei)
Nuclei di Fuoco Comunisti (Communist Fire Nuclei)
Nuclei Guerriglia Proletaria (Proletarian Guerrilla Nuclei)
Nuclei Iniziativa Popolare (Popular Initiative Nuclei)
Nuclei Operai Combattenti (Combatant Workers' Nuclei)

Nuclei Organizzati di Compagni (Comrades' Organized Nuclei)
Nuclei Organizzati per l'Antifascismo (Organized Nuclei for Anti-Fascism)
Nuclei per la Costruzione del Movimento Comunista Rivoluzionario (Nuclei for the Construction of the Communist Revolutionary Movement)
Nuclei per l'Organizzazione Comunista (Nuclei for Communist Organization)
Nuclei Proletari (Proletarian Nuclei)
Nuclei Proletari Combattenti (Proletarian Combatant Nuclei)
Nuclei Proletari Combattenti Comunisti (Communist Proletarian Combatant Nuclei)
Nuclei Proletari Comunisti (Communist Proletarian Nuclei)
Nuclei Proletari Pendolari (Proletarian Commuters' Nuclei)
Nuclei Rivoluzionari Antimperialisti (Anti-Imperialist Revolutionary Nuclei)
Nuclei Rivoluzionari Combattenti (Combatant Revolutionary Nuclei)
Nuclei Rivoluzionari di Contropotere (Revolutionary Counterpower Nuclei)
Nuclei Rivoluzionari per il Comunismo e la Liberta (Revolutionary Nuclei for Communism and Freedom)
Nucleo Armato Comunista (Communist Armed Nucleus)
Nucleo Armato per il Movimento Proletario Offensivo (Armed Nucleus for the Proletarian Offensive Movement)
Nucleo Combattente per il Contropotere Territoriale (Combatant Nucleus for Territorial Counterpower)
Nucleo Comunista (Communist Nucleus)
Nucleo Comunista Armato Proletario (Communist Armed Proletarian Nucleus)
Nucleo Comunista Combattenti per il Movimento Proletario di Resistenza Offensiva (Communist Nucleus of Combatants for the Offensive Resistance Proletarian Movement)
Nucleo di Controinformazione Territoriale (Territorial Counterinformation Nucleus)
Nucleo Operai Comunisti (Communist Workers' Nucleus)
Nucleo Operativo per il Potere Rosso (Operative Nucleus for Red Power)
Nucleo Proletario per il Potere Rosso (Proletarian Nucleus for Red Power)
Nuova Formazione Partigiana della Nuova Resistenza (New Partisan Formation of the New Resistance)
Offensiva Comunista (Communist Offensive)
Operai Comunisti Combattenti (Communist Combatant Workers)
Opposizione Popolare Rivoluzionaria (Revolutionary Popular Opposition)
Organizzazione Armata Proletaria (Armed Proletarian Organization)
Organizzazione Operaia per il Comunismo (Workers' Organization for Communism)
Organizzazione Proletaria Combattente (Proletarian Combatant Organization)
Partito Combattente Comunista (Combatant Communist Party)
Popolo Armato-Gruppo 1 Maggio (Armed People—May 1st Group)
Prima Linea (Front Line)
Prima Posizione (Front Position)
Proletari Armati Comunisti (Armed Communist Proletarians)
Proletari Armati per il Comunismo (Armed Proletarians for Communism)
Proletari Armati per il Contropotere Rivoluzionario (Armed Proletarians for Revolutionary Counterpower)
Proletari Armati per il Contropotere Territoriale (Armed Proletarians for Territorial Counterpower)
Proletari Combattenti Comunisti (Combatant Commuist Proletarians)
Proletari Combattenti per il Comunismo (Proletarian Combatants for Communism)
Proletari Comunisti (Communist Proletarians)
Proletari Comunisti Organizzati (Organized Communist Proletarians)
Proletari Comunisti per il Contropotere (Communist Proletarians for Counterpower)
Proletari Metropolitani (Metropolitan Proletarians)
Proletari Metropolitani senza Salario (Metropolitan Proletarians without Salary)
Proletari Organizzati per il Comunismo (Organized Proletarians for Communism)
Proletari per l'Offensiva Comunista per Combattere il Sistema (Proletarians for Communist Offensive to Fight the Establishment)
Proletariato Armato (Armed Proletariat)
Proletarie in Lotta (She-Proletarians in the Struggle)
Rappresaglia Comunista (Communist Reprisal)
Reparti Comunisti Armati (Armed Communist Units)
Reparti Comunisti d'Assalto (Communist Assault Units)
Reparti Proletari di Combattimento (Proletarian Combat Units)
Rivolta Socialista (Socialist Revolt)
Ronda del Proletariato (Proletarian Patrol)
Ronde Antifasciste (Anti-Fascist Patrols)
Ronde Armate Comuniste (Armed Communist Patrols)

Ronde Armate per il Comunismo (Armed Patrols for Communism)
Ronde Armate Proletarie (Armed Proletarian Patrols)
Ronde Armate Proletarie contro la Selezione (Armed Proletarian Patrols Agaist Selection)
Ronde Comuniste (Communist Patrols)
Ronde Comuniste contro i Licenziamenti (Communist Patrols Against Dismissals)
Ronde Comuniste d'Assalto (Communist Assault Patrols)
Ronde Comuniste Organizzate (Organized Communist Patrols)
Ronde Comuniste Proletarie per il Contropotere Territoriale (Communist Proletarian Patrols for Territorial Counterpower)
Ronde Operaie per il Contropotere Territoriale (Workers' Patrols for Territorial Counterpower)
Ronde Proletarie (Proletarian Patrols)
Ronde Proletarie Antifasciste (Anti-Fascist Proletarian Patrols)
Ronde Proletarie Antifasciste per il Contropotere Territoriale (Anti-Fascist Proleterian Patrols for Territorial Counterpower)
Ronde Proletarie per il Comunismo (Proletarian Patrols for Communism)
Ronde Proletarie Comuniste (Communist Proletarian Patrols)
Ronde Proletarie di Combattimento (Proletarian Combat Patrols)
Ronde Proletarie di Combattimento per il Comunismo (Proletarian Combat Patrols for Communism)
Ronde Proletarie per il Contropotere Territoriale (Proletarian Patrols for Territorial Counterpower)
Ronde Proletarie Territoriali per il Comunismo (Territorial Proletarian Patrols for Communism)
Ronde Staliniste per il Combattimento (Stalinist Combat Patrols)
Ronde Territoriali per il Comunismo (Territorial Patrols for Communism)
Ronde Territoriali di Vigilianza Antifascista (Territorial Patrols for Anti-Fascist Vigilance)
Squadre Antifasciste (Anti-Fascist Squads)
Squadre Antifasciste Territoriali (Anti-Fascist Territorial Squads)
Squadre Armate Antirepressive (Anti-Repressive Armed Squads)
Squadre Armate Combattenti (Combatant Armed Squads)
Squadre Armate Comuniste (Communist Armed Squads)
Squadre Armate Operaie (Workers' Armed Squads)
Squadre Armate per la Lotta di Liberazione Comunista (Armed Squads for the Communist Liberation Struggle)
Squadre Armate Proletarie (Proletarian Armed Squads)
Squadre Armate Proletarie di Combattimento (Armed Proletarian Combat Squads)
Squadre Armate Territoriali per il Comunismo (Territorial Proletarian Squads for Communism)
Squadre Comuniste Combattenti (Communist Combat Squads)
Squadre Comuniste dell'Esercito Proletario (Communist Squads of the Proletarian Army)
Squadre Comuniste Proletarie (Communist Proletarian Squads)
Squadre Comuniste Territoriali (Communist Territorial Squads)
Squadre di Combattimento Proletarie (Proletarian Combat Squads)
Squadre Proletarie per il Controllo Territoriale (Proletarian Squads for Territorial Control)
Studenti Proletari (Proletarian Students)
Unione Bande Armate Proletarie (Union of Proletarian Armed Bands)
Unione Gruppi Armati Proletari (Union of Proletarian Armed Groups)
Unita Combattenti Comuniste (Communist Combat Units)
Unita Proletarie Revoluzionarie (Revolutionary Proletarian Units)
Unita Proletarie Territoriali (Proletarian Territorial Units)
Unita Territoriali Comuniste (Communist Territorial Units)
Vigilanza Comunista (Communist Vigilance)
Volante Rossa (Red Strike Force)

APPENDIX IV

Terrorist/Subversive Formations of Neo-Fascist Inspiration

Alleanza Anticommunista (Anti-Communist Alliance)
Alleanza Armata Anticomunista (Anti-Communist Armed Alliance)
Alleanza Armata Popolare Nazionalista (Popular Nationalist Armed Alliance)
Avanguardia Militare Neofascista (Neo-Fascist Military Vanguard)

Avanguardia Nazionale (National Vanguard)
Azione Anticomunista (Anti-Communist Action)
Azione Nazista Rivoluzionaria (Revolutionary Nazi Action)
Bande Fasciste (Fascist Bands)
Belve Nere (Black Beasts)
Brigate Nere (Black Brigades)
Comitati Autonomi Nazionali Rivoluzionari (National Revolutionary Autonomous Committees)
Comitato Nazionale Rivoluzionario (National Revolutionary Committee)
Comunita Organiche di Popolo (Organic Communities of the People)
Comunita per la Rivoluzione di Popolo (Community for the Revolution of the People)
Comunita Rivoluzionarie Autonome (Autonomous Revolutionary Communities)
Coordinamento Comitati Fascisti (Fascist Committees Coordination)
Corpo Armato Nero (Black Armed Corps)
Esercito Clandestino Anticomunista (Anti-Communist Clandestine Army)
Fratellanza Ariana (Arian Brotherhood)
Fronte Organizzato per la Liberta dell'Ordine (Organized Front for the Freedom of Order)
Fronte Paramilitare di Azione Rivoluzionaria (Paramilitary Front of Revolutionary Action)
Fronte Revoluzionario Anticomunista (Anti-Communist Revolutionary Front)
Fronte Unito Rivoluzionario (United Revolutionary Front)
Giovani Fascisti (Young Fascists)
Gioventu Ariana (Arian Youth)
Gioventu Nazista (Nazi Youth)
Giustizieri d'Italia (Executioners of Italy)
Gruppi Armati Fascisti (Armed Fascist Groups)
Gruppo Armato Nazista (Armed Nazi Group)
Gruppo di Fascisti Combattenti (Group of Fascist Combatants)
Gruppo Falangisti per l'Ordine (Phalangists' Group for Order)
Gruppo Fascista Italiano (Italian Fascist Group)
Gruppo Gioventu Nazifascista (Nazi-Fascist Youth Group)
Gruppo Nero (Black Group)
Gruppo Rivoluzionario Nazista (Revolutionary Nazi Group)
Guerriglieri Nazifascisti Brigate Nere (Nazi-Fascist Guerrilla Fighters Black Brigades)
Movimento Azione Rivoluzionaria (Revolutionary Action Movement)
Movimento Rivoluzionario Popolare (Popular Revolutionary Movement)
Movimento Politico Fronte Nero (Political Movement Black Front)
Neofascisti Rivoluzionari (Revolutionary Neo-Fascists)
Nuclei Anticomunisti Urbani (Anti-Communist Urban Nuclei)
Nuclei Armati Fascisti (Armed Fascist Nuclei)
Nuclei Armati Rivoluzionari (Armed Revolutionary Nuclei)
Nuclei Fascisti Organizzati (Organized Fascist Nuclei)
Nuclei Fascisti Rivoluzionari (Fascist Revolutionary Nuclei)
Nucleo Fascista di Guerriglia Rivoluzionaria (Fascist Nucleus for Revolutionary Guerrilla)
Nuova Fenice (New Phoenix)
Ordine Futuro (Future Order)
Ordine Nazionale Socialist (National Socialist Order)
Ordine Nero (Black Order)
Ordine Nuovo (New Order)
Organizzazione Clandestina Fascismo Militante (Militant Fascism Clandestine Organization)
Organizzazione Resistenza Anticomunista (Anti-Communist Resistance Organization)
Soldati Combattenti per l'Ordine Nuovo (Combatant Soldiers for New Order)
Squadre Antiterrorismo (Antiterrorism Squads)
Squadre Armate Combattenti Fasciste (Armed Combatant Fascist Squads)
Squadre Azione Mussolini (Mussolini Action Squads)
Squadre Armate Naziste (Armed Nazi Squads)
Squadre di Azione Nazifasciste (Nazi-Fascist Action Squads)
Terrore Nero (Black Terror)
Terza Posizione (Third Position)
Unita Organiche di Popolo (People's Organic Units)
Unita Rivoluzionaria (Revolutionary Unity)

Volante Nera (Black Strike Force)

APPENDIX V

Terrorist/Subversive Formations of Anarchist Inspiration

Anarchia Armata (Armed Anarchy)
Associazione Rivoluzionaria Anarchici (Revolutionary Association of Anarchists)
Azione Diretta—Gruppo Rivoluzionario Anarchico (Direct Action—Anarchist Revolutionary Group)
Azione Rivoluzionaria (Revolutionary Action)
Cellule Anarchiche Organizzate (Organized Anarchist Cells)
Comitato Centrale Sacco-Vanzetti (Central Committee "Sacco-Vanzetti")
Gruppi Anarchici Individualisti (Individualist Anarchist Groups)
Gruppo Anarchico Bakunin (Anarchist Group "Bakunin")
Gruppo Anarchico Contropotere (Anarchist Counterpower Group)
Nucleo Anarco Comunista (Anarchist Communist Nucleus)
Nuovo Nucleo Anarchico (New Anarchist Nucleus)
Organizzazione Rivoluzionaria Anarchica (Anarchist Revolutionary Organization)

APPENDIX VI

Terrorist/Subversive Formations of Separatist Inspiration

SARDINIA

Barbagia Rossa (Red Barbagia)
Brigate Proletarie della Barbagia (Proletarian Brigades of Barbagia)
Combattentis Rivoluzionarius Sardus
Comitato Rivoluzionario Sardo per il Comunismo (Sardinian Revolutionary Committee for Communism)
Fronte Nazionale di Liberazione della Sardegna (National Front for the Liberation of Sardinia)
Fronte Rivoluzionario Indipendentista Sardo (Sardinian Independent Revolutionary Front)
Nuclei Rivoluzionari Sardi (Sardinian Revolutionary Nuclei)
Ronde Proletarie Sarde (Sardinian Proletarian Patrols)

TRENTINO—ALTO ADIGE (SOUTH TYROL)

Befreiungsausschuss Suedtirol
Heimatbund
Tirol

APPENDIX VII

Terrorist/Subversive Formations of Nationalistic Counterseparatist Inspiration

Associazione Protezione Italiani (Association for the Protection of Italians)
Combattenti Italiani per l'Alto Adige (Italian Combatants for Alto Adige)
Movimento Italiano Adige (Italian Adige Movement)
Nuclei Difesa Territoriale Triestina (Nuclei for the Territorial Defense of Trieste)

APPENDIX VIII

Terrorist/Subversive Formations of Ecological Inspiration

Brigate Verdi (Green Brigades)
Gruppi Ecologici Popolari (Popular Ecological Groups)
Nucleo d'Azione Ecologica Robin Hood (Ecological Action Group "Robin Hood")

APPENDIX IX

Terrorist/Subversive Formations of Feminist Inspiration

Compagne Organizzate per il Contropotere Femminista (Organized She-Comrades for Feminist Counterpower)

Donne Organizzate per il Contropotere Femminista (Organized Women for Feminist Counterpower)
Femministe Organizzate (Organized Feminists)
Gruppo Femminista (Feminist Group)
Nucleo Armato Femminista (Armed Feminist Nucleus)
Ronde Femministe (Feminist Patrols)

APPENDIX X

TERRORIST/SUBVERSIVE FORMATIONS OF "INTERNATIONALIST" INSPIRATION

Baader Meinhof
Brigate Internazionali contro la Repressione in Europa (International Brigades Against Repression in Europe)
Collettivo Veneziano Belfast (Venetian Belfast Collective)
Gruppi Proletari Internazionali (International Proletarian Groups)
Gruppo Internazionalista Proletario (International Proletarian Group)
Movimento Eurorivoluzionario Antimperialista (Euro-Revolutionary Anti-Imperialist Movement)
Nucleo Internazionalista Proletario (Internationalist Proletarian Nucleus)

APPENDIX XI

TERRORIST FORMATIONS WITH "TRANSNATIONAL" OBJECTIVES

ARMENIAN ORGANIZATIONS

Commando della Giustizia per il Genocidio Armeno (Justice Commando for the Armenian Genocide)
Esercito Segreto per la Liberazione dell'Armenia (Secret Army for the Liberation of Armenia)
Gruppo della Resistenza Armena (Armenian Resistance Group)
Organizzazione Armena per la Lotta Armata (Armenian Organization for the Armed Struggle)
Organizzazione 3 Ottobre (October 3 Organization)

PALESTINIAN ORGANIZATIONS

Organizzazione del Libano Nero (Black Lebanon Organization)
Organizzazione del 15 Maggio per la Liberazione della Palestina (May 15th Organization for the Liberation of Palestine)

APPENDIX XII

CHRONOLOGY OF SIGNIFICANT TERRORIST ACTIONS PERPETRATED BY MAJOR SUBVERSIVE FORMATIONS OF COMMUNIST INSPIRATION

RED BRIGADES (BRIGATE ROSSE—BR)

March 3, 1972.—Milan. Political abduction of Idalgo Macchiarini, personnel manager, Sit-Siemens (Corp.). Released same day.
March 13, 1972.—Cesano Boscone (Milan). Political abduction of Bartolomeo Di Mino, deputy secretary of the local MSI section. Released same day.
February 12, 1973.—Turin. Political abduction of Bruno Labate, provincial secretary of CISNAL Metalworkers. Released same day.
June 28, 1973.—Milan. Political abduction of Michele Mincuzzi, executive employee, Alfa Romeo (Corp.). Released same day.
December 10, 1973.—Turin. Political abduction of Ettore Amerio, personnel manager, FIAT (Corp.). Released on December 18.
April 18, 1974.—Genoa. Political abduction of Mario Sossi, Assistant State Attorney. Released on May 23.
June 17, 1974.—Padua. Raid on local MSI section offices and murder of Graziano Giralucci and Giuseppe Mazzola, MSI militants.
October 14, 1974.—Robbiano di Mediglia (Milan). Murder of Carabinieri NCO Felice Maritano during a fire engagement.
December 5, 1974.—Argelato (Bologna). Murder of Carabinieri NCO Andrea Lombardini during an abortive bank robbery.
May 15, 1975.—Milan. Wounding of Christian Democratic councilman Masimo De Carolis during raid on his law office.

June 4, 1975.—Canelli (Asti). Abduction for ransom of Vittorio Vallarino Gancia, wine producer. Rescued by the Carabinieri on June 5.
June 5, 1975.—Acqui Terme (Alessandria). Murder of Carabinieri trooper Giovanni D'Alfonso and wounding of Lt. Umberto Rocca and NCO Rosario Catafi during a fire engagement.
October 21, 1975.—Rivoli (Turin). Political abduction and wounding of Enrico Boffa, Christian Democratic municipal councilman and plant manager, Singer (Corp.) Released same day.
October 22, 1975.—Arenzano (Genoa). Political abduction of Vincenzo Casabona, personnel manager, Ansaldo Nucleare (Corp.). Released same day.
December 17, 1975.—Turin. Wounding of Luigi Solera, medical officer, Mirafiori Plant, FIAT (Corp.).
April 2, 1976.—Milan. Wounding of Matteo Palmieri, private security guard, Magneti Marelli (Corp.).
April 4, 1976.—Nichelino (Turin). Wounding of Giuseppe Borello, foreman, Mirafiori Plant, FIAT (Corp.).
June 8, 1976.—Genoa. Murder of State Attorney Francesco Coco and of escort members, public security NCO Giovanni Saponara and Carabinieri trooper Antioco Deiana.
September 1, 1976.—Biella (Vercelli). Murder of Deputy Police Commissioner Francesco Cusano.
December 15, 1976.—Sesto S. Giovanni (Milan). Murder of Deputy Police Commissioner Vittorio Padovani and public security NCO Sergio Bazzaga during performance of arrest.
January 12, 1977.—Belvedere Montalto (Genoa). Abduction for ranson of Piero Costa, shipowner. Released on April 3, after payment of Lit. 1.5 billion.
February 13, 1977.—Rome. Wounding of Valerio Traversi, Inspector General of Prison Administration.
February 17, 1977.—Turin. Wounding of Mario Scaffone, personnel manager, Rivalta Plant, FIAT (Corp.).
February 19, 1977.—Cascina Olona (Milan). Murder of public security NCO Lino Ghedini and wounding of patrolman Adriano Comizzoli during document check.
March 12, 1977.—Turin. Murder of public security NCO Giuseppe Ciotta.
April 20, 1977.—Turin. Wounding of Dante Notaristefano, Chief Secretary of the State Attorney's Office and Christian Democratic councilman.
April 22, 1977.—Turin. Wounding of Antonio Munari, foreman, Mirafiori Plant, FIAT (Corp.).
April 28, 1977.—Turin. Murder of Fulvio Croce, president of the local bar association.
June 1, 1977.—Genoa. Wounding of Vittorio Bruno, editor of daily *Secolo XIX*.
June 2, 1977.—Milan. Wounding of Indro Montanelli, editor of daily *Il Giornale Nuovo*.
June 3, 1977.—Rome. Wounding of Emilio Rossi, editor of TGI television newscast.
June 9, 1977.—Sesto S. Giovanni (Milan). Wounding of Fausto Silini, foreman, Breda (Corp.).
June 12, 1977.—Milan. Wounding of two Carabinieri assigned to protect Mario Trimarchi, Chief Judge of the local Court of Appeals.
June 21, 1977.—Rome. Wounding of Remo Cacciafesta, Dean, School of Economics, University of Rome.
June 28, 1977.—Genoa. Wounding of Sergio Prandi, executive employee, Ansaldo (Corp.).
June 30, 1977.—Milan. Wounding of Luciano Maraccani, executive employee, OM-FIAT (Corp.).
June 30, 1977.—Turin. Wounding of Franco Visca, executive employee, Mirafiori Plant, FIAT (Corp.).
July 11, 1977.—Rome. Wounding of Mario Perlini, exponent of Comunione e Liberazione.
July 11, 1977.—Genoa. Wounding of Angelo Sibilla, Christian Democratic regional secretary.
July 13, 1977.—Turin. Wounding of Maurizio Puddu, Christian Democratic regional deputy secretary.
October 11, 1977.—Turin. Wounding of Rinaldo Camaioni, executive employee, Personnel Office, Mirafiori Plant, FIAT (Corp.).
October 23, 1977.—Milan. Wounding of Carlo Arienti, Christian Democratic municipal councilman.
October 25, 1977.—Turin. Wounding of Antonio Cocozzello, Christian Democratic municipal councilman.

November 2, 1977.—Rome. Wounding of Publio Fiori, Christian Democratic regional committee member.
November 8, 1977.—Milan. Wounding of Aldo Grassini, executive employee, Alfa Romeo (Corp.).
November 10, 1977.—Turin. Wounding of Pietro Osella, executive employee, FIAT (Corp.).
November 17, 1977.—Genoa. Wounding of Carlo Castellani, executive employee, Ansaldo (Corp.), and PCI regional committee member.
November 29, 1977.—Turin. Demise of Carlo Casalegno, Deputy Editor of daily *La Stampa*, following firearm attack of November 16.
December 24, 1977.—Rome. Wounding of Mario Pucci, journalist and wife Franca Mosco).
January 10, 1978.—Turin. Wounding of Gustavo Ghirotti, executive employee, FIAT (Corp.).
January 13, 1978.—Rome. Wounding of Lello De Rosa, Chief, Public Relations Office, SIP Telephone Company.
January 18, 1978.—Genoa. Wounding of Filippo Peschiera, university professor and Christian Democratic provincial committee member.
January 24, 1978.—Milan. Wounding of Nicola Toma, Public Relations Office, Sit-Siemens (Corp.).
February 14, 1978.—Rome. Murder of Riccardo Palma, Supreme Court Judge detailed to the Ministry of Justice.
February 21, 1978.—Venice. Murder of private security guard Franco Battagliarin incidental to bombing of offices of daily *Il Gazzettino*.
March 10, 1978.—Turin. Murder of public security NCO Rosario Berardi.
March 16, 1978.—Rome. Political abduction of Aldo Moro, President of the Christian Democratic Party and former Premier, and murder of his five-man escort: Carabinieri NCO Oreste Leonardi and trooper Domenico Ricci, and public security NCO Francesco Zizzi and patrolmen Raffaele Lozzino and Giulio Rivera.
March 24, 1978.—Turin. Wounding of Giovanni Picco, Christian Democratic regional councilman.
April 7, 1978.—Genoa. Wounding of Felice Schiavetti, president of the local association of industrialists.
April 11, 1978.—Turin. Murder of Lorenzo Cotugno, prison guard.
April 20, 1978.—Milan. Murder of Francesco De Cataldo, prison guard NCO.
April 26, 1978.—Rome. Wounding of Girolamo Mechelli, Christian Democratic regional councilman and president of the region.
April 27, 1978.—Turin. Wounding of Sergio Palmieri, executive employee, Mirafiori Plant, FIAT (Corp.).
May 4, 1978.—Milan. Wounding of Umberto Degli Innocenti, manager, Castelletto Plant, Sit-Siemens (Corp.).
May 4, 1978.—Genoa. Wounding of Alfredo Lamberti, executive employee, Italsider (Corp.).
May 9, 1978.—Rome. Murder of captive Aldo Moro.
May 12, 1978.—Milan. Wounding of Tito Berardini, secretary of a local Christian Democratic section.
May 15, 1978. Bologna. Wounding of Antonio Mazzotti, personnel manager, Menarini (Corp.).
June 21, 1978.—Genoa. Murder of Antonio Esposito, public security official.
July 5, 1978.—Milan. Wounding of Gavino Manca, executive employee, Pirelli (Corp.).
July 6, 1978.—Turin. Wounding of Aldo Ravaioli, president of the local small industry association.
July 7, 1978.—Genoa. Wounding of Fausto Gasparino, executive employee, Intersind, and former Christian Democratic regional deputy secretary.
July 10, 1978.—Milan. Wounding of municipal policemen Mario Botta and Marcello Moresco during document check.
July 28, 1978.—Milan. Wounding of Gino Bufalini, watchman, Villa Ruini.
September 28, 1978.—Turin. Murder of Pietro Coggiola, executive employee, Chiavasso Plant, Lancia (Corp.).
September 29, 1978.—Milan. Wounding of Ippolito Bestonso, executive employee, Alfa Romeo (Corp.).
October 10, 1978.—Rome. Murder of Girolamo Tartaglione, Supreme Court Judge detailed to the Ministry of Justice.
October 24, 1978.—Rome. Wounding of public security patrolman Vincenzo Garofalo during ambush on patrol squad car.
November 17, 1978.—Turin. Wounding of public security NCO Antonio Di Tommasi.

[redacted]ember 15, 1978.—Turin. Murder of public security patrolmen Salvatore Lanza and Salvatore Porceddu assigned to external surveillance duties in the proximity of the local prison.

December 21, 1978.—Rome. Wounding of public security patrolmen Gaetano Pellegrino and Giuseppe Rainone assigned to protective duties in front of the residence of Giovanni Galloni, Christian Democratic Floor Leader of the Chamber of Deputies.

January 20, 1979.—Turin. Wounding of public security patrolmen Francesco Sanna and Angelo Cali during a fire engagement.

January 24, 1979.—Genoa. Murder of CGIL labor union representative Guido Rossa, a PCI member who had testified against a BR "courier."

March 27, 1979.—Cittadella (Naples). Wounding of prison guard Giacomo Vegliante

March 29, 1979.—Rome. Murder of Italo Schettini, Christian Democratic provincial councilman and owner of low-income housing.

April 24, 1979.—Turin. Wounding of Franco Piccinelli, journalist with TGI television news cast and Christian Democratic exponent.

April 24, 1979.—Genoa. Wounding of Giancarlo Dagnino, Christian Democratic provincial secretary.

April 30, 1979.—Genoa. Wounding of Giuseppe Bonzani, executive employee, Ansaldo (Corp.).

May 3, 1979.—Rome. Raid on Christian Democratic committee offices in Piazza Nicosia; concomitant ambush of public security patrol responding to emergency call and murder of NCO Antonio Mea and patrolman Pierino Ollanu and wounding of patrolman Vincenzo Ammirata; and detonation of explosive devices inside said offices.

May 29, 1979.—Genoa. Wounding of Enrico Ghio, Christian Democratic regional councilman.

May 31, 1979.—Genoa. Wounding of Fausto Cuocolo, Christian Democratic regional councilman and Dean, School of Political Science, University of Genoa.

June 8, 1979.—Turin. Wounding of Giovanni Farina, watchman, FIAT (Corp.).

July 13, 1979.—Rome. Murder of Carabinieri Lt. Col. Antonio Varisco, commander of the unit in support of the court house.

September 24, 1979.—Rome. Wounding of public security patrolman Giuseppe Prizzi during a fire engagement.

October 4, 1979.—Turin. Wounding of Cesare Varetto, executive employee, FIAT, (Corp.).

October 31, 1979.—Rome. Wounding of public security patrolman Michele Tedesco.

November 9, 1979.—Murder of public security patrolman Michele Granato.

November 21, 1979.—Sampierdarena (Genoa). Murder of Carabinieri NCO Vittorio Battaglin and trooper Mario Tosa.

[redacted]ovember 27, 1979.—Rome. Murder of public security NCO Domenico Taverna.

[redacted]ecember 7, 1979.—Rome. Murder of public security NCO Mariano Romiti.

December 12, 1979.—Turin. Wounding of Adriano Albertini, foreman, Mirafiori Plant, FIAT (Corp.).

December 21, 1979.—Milan. Wounding of hospital attendants Lino Manfredini and Ferdinando Malaterra.

January 8, 1980. Milan. Murder of public security NCO Rocco Santoro and patrolmen Antonio Cestari and Michele Tatulli.

January 19, 1980.—Rome. Wounding of 18 public security personnel resulting from the detonation of an explosive device in the "Massaua" Barracks. (Responsibility also claimed by the Popular Movement for Revolution and Communist Patrols for Territorial Counterpower.)

January 25, 1980.—Genoa. Murder of Carabinieri Lt. Col. Emanuele Tuttobene, trooper Antonio Casu, and wounding of army Lt. Col. Luigi Ramundo.

January 29, 1980.—Mestre (Venice). Murder of Sergio Gori, manager, Marghera Plant, Petrolchimico (Corp.).

February 12, 1980.—Rome. Murder of Vittorio Bachelet, Vice-President of the Superior Council of the Judiciary, Professor of Administrative Law, and former President of Catholic Action.

February 21, 1980.—Milan. Wounding of Piero Dall'Era, executive employee, Arese Plant, Alfa Romeo (Corp.).

February 29, 1980.—Genoa. Wounding of Roberto Della Rocca, personnel manager, Cantieri Navali Riuniti (Corp.).

March 16, 1980.—Salerno. Murder of state attorney Nicola Giacumbi.

March 18, 1980.—Rome. Murder of Girolamo Minervini, Supreme Court Judge, and wounding of bystanders Roberto Aversa, Maria Aversa, and Gina Latini.

March 24, 1980.—Genoa. Wounding of Giancarlo Moretti, Christian Democratic municipal councilman.
March 28, 1980.—Genoa. Wounding of Carabinieri NCO Rinaldo Bena in the performance of an arrest.
March 30, 1980.—Padua. Raid on an army installation, theft of weapons and wounding of NCO Gabriele Sisto.
April 1, 1980.—Milan. Raid on a local Christian Democratic section offices and mass leg-shooting of party exponents Nadir Tedeschi, Eros Robbiani, Emilio Del Buono, and Antonio Iosa.
April 16, 1980. –Rome. Wounding of Savino DiGiacomantonio, Christian Democratic councilman.
May 7, 1980.—Rome. Wounding of Michele Pirri, Labor Ministry official.
May 12, 1980.—Mestre (Venice). Murder of Alfredo Albanese, public security official.
May 17, 1980.—Rome. Wounding of Domenico Gallucci, secretary of a local Christian Democratic section.
May 19, 1980.—Naples. Murder of Pino Amato, Christian Democratic regional councilman, and wounding of bystanders Antonio Tucci and Bruno Vitale.
May 20, 1980.—Milan. Attack on a Carabinieri barracks with a grenade launcher and wounding of trooper Maurizio Marcovati.
June 19, 1980.—Turin. Murder of Pasquale Viale, local prison inmate accused of being a "spy."
October 27, 1980.—Nuoro. Murder of prison inmates Biagio Giaquinto and Francesco Zarillo during uprising led by jailed red brigadists.
November 12, 1980.—Milan. Murder of Renato Briano, general manager, Ercole Marelli (Corp.).
November 13, 1980.—Civitella Alfetana (L'Aquila). Wounding of Carabinieri trooper Antonio De Crescenzio during an armed robbery.
November 28, 1980.—Milan. Murder of Manfredo Mazzanti, executive employee, Falk (Corp.).
December 1, 1980.—Rome. Murder of Giuseppe Furci, medical officer, Regina Coeli Prison.
December 11, 1980.—Milan. Wounding of Maurizio Caramello, executive employee, Breda (Corp.).
December 12, 1980.—Rome. Political abduction of Supreme Court Judge Giovanni D'Urso assigned to the Ministry of Justice. Released on January 15, 1981.
December 28, 1980.—Trani (Bari). Wounding of five prison guards during internal uprising. Nineteen hostages freed by the Carabinieri Special Intervention Groups (GIS) on December 29.
December 31, 1980.—Rome. Murder of Carabinieri Brigadier General Enrico Galvaligi, assigned to the Office for Coordinating the Security of Special Prison Facilities.
January 8, 1981.—Salerno. Wounding of Domenico Pierri, gun shop owner, during armed robbery.
February 5, 1981.—Milan. Wounding of Savatore Compare, foreman, Breda Fucine.
February 5, 1981.—Rome. Wounding of Bruno Michelini, jewelry shop owner, and wife, during armed robbery.
February 17, 1981.—Milan. Murder of Luigi Marangoni, M.D., director of the local hospital.
February 26, 1981.—Matera. Wounding of prison guard Immacolata Schiuma by two jailed red brigadists.
March 12, 1981.—Milan. Wounding of Alberto Valenzasca, foreman, Alfa Romeo (Corp.).
March 27, 1981.—Rome. Armed robbery of a Banca Nazionale del Lavoro branch and wounding of a private security guard.
April 7, 1981.—Rome. Murder of prison guard Raffaele Cinotti.
April 27, 1981.—Torre del Greco (Napes). Political abduction of Christian Democratic regional councilman Ciro Cirillo; murder of his two-man escort: public security NCO Luigi Carbone and driver Mario Cancello; and wounding of his secretary, Ciro Fiorilli. Released on July 24.
May 8, 1981.—La Spezia. Wounding of public security patrolmen Enrico Summa and Nicola Bruno during a fire engagement.
May 15, 1981.—Naples. Wounding of Christian Democratic municipal councilman Rosario Giovine.
May 20, 1981.—Marghera (Venice). Political abduction of Giuseppe Taliercio, executive employee, Montedison (Corp.).
May 22, 1981.—Rome. Wounding of Renzo Retrosi, director of the provincial labor placement office.

May 29, 1981.—Rome. Wounding of Giuseppe Magagna, Instructor, technical institute, "Teresa Gerini."
June 3, 1981.—Milan. Murder of private security guard Antonio Frasca.
June 3, 1981.—Milan. Political abduction of Renzo Sandrucci, Chief of Production and Labor Organization, Alfa Romeo (Corp.). Released on July 23.
June 6, 1981.—Naples. Wounding of PCI councilman Umberto Siola.
June 10, 1981.—Rome. Raid on a movers' cooperative and wounding of members Alberto Ancora, Giulio Baglione, and Giuseppe Marangella.
June 11, 1981.—S. Benedetto del Tronto (Ascoli Piceno). Political abduction of Roberto Peci, brother of "repentant" red brigadist Patrizio Peci.
June 19, 1981.—Rome. Murder of deputy police commissioner Sebastiano Vinci and wounding of public security patrolman Pacifico Votto.
June 19, 1981.—Rome. Wounding of attorney Antonio De Vita, court-appointed counsel for "repentant" red brigadist Patrizio Peci.
July 6, 1981.—Mestre (Venice). Murder of Giuseppe Taliercio after 46 days of captivity.
July 16, 1981.—Pontecchio di Sasso Marconi (Bologna). Wounding of Giuseppe Arcinati, private security guard, during armed robbery of Banca Cooperativa.
July 30, 1981.—Rome. Armed robbery of SIP payroll in the amount of Lit. 736 million and wounding of private security guard Luciano Careddu and bystander Roberta Roscioli.
August 3, 1981.—Rome. Murder of Roberto Peci after 54 days of captivity.
October 19, 1981.—Milan. Murder of public security patrolmen Vincenzo Tuminello and Carlo Bonantuono and wounding of patrolman Franco Epifanio and bystander Angelo Baiati during fire engagement.
December 17, 1981.—Verona. Political abduction of U.S. Army Brigadier General James L. Dozier, Deputy Chief of Staff for Logistic and Administration of Allied Land Forces in Southern Europe. Freed by the Central Operative Nucleus for Security (NOCS) of the state police on January 28, 1982.
January 6, 1982.—Rome. Wounding of deputy police commissioner Nicola Simone during abortive political abduction attempt.
April 10, 1982.—Rome. Wounding of Carabinieri NCO Giulio Gregori and troopers Francesco Valori and Michele Scaringella during attack on special facilities for the trial of the Rome column of the BR.
April 27, 1982.—Naples. Murder of Raffaele Delcogliano, Christian Democratic regional councilman and his driver Aldo Iermano.
June 8, 1982.—Rome. Murder of state police agents Franco Sammarco and Giuseppe Carretta.
June 29, 1982.—Termini Immerese (Palermo). Murder of prison guard NCO Antonio Burrafato.
July 13, 1982.—Naples. Murder of deputy police commissioner Antonio Ammaturo, his driver state police agent Pasquale Paola, and wounding of bystanders Vincenzo De Lorenzo, Giuseppina Scarano, and Luciano Manzo.
July 16, 1982.—Lissone (Milan). Murder of Carabinieri NCO Valerio Renzi. (Responsibility also claimed by Front Position.)
July 19, 1982.—Naples. Abduction of hospital X-ray technician Giovanni La Greca for the purpose of assisting red brigadists wounded while escaping after attack on deputy police commissioner Ammaturo. Released on July 24.
August 26, 1982.—Salerno. Assault on two army vehicles to seize weapons; murder of soldier Antonio Palumbo, state police agents Antonio Bandiera and Mario De Marco; and wounding of agents Salvatore Manci, Pasquale D'Amelio, soldiers Ventura Talamo, Sergio Garau, and bystanders Salvatore De Sio and Lorenzo Trevisone.
October 21, 1982.—Turin, Murder of private security guards Antonio Pedio and Sebastiano D'Alleo during armed robbery of Banco di Napoli.
October 22, 1982.—Rome. Wounding of state police agent Luigi Ianuario.

ARMED PROLETARIAN NUCLEI (NUCLEI ARMATI PROLETARI—NAP)

July 25, 1974.—Naples. Abduction for ransom of student Antonio Gargiulo, son of a prestigious local physician. Released on the same day after payment of Lit. 70 million.
October 29, 1974.—Florence. Wounding of Carabinieri NCO Luciano Arrigucci and civilian Angelo De Rosa during armed robbery of Cassa di Risparmio.
December 18, 1974.—Naples. Abduction for ransom of liquor producer Giuseppe Moccia. Released on December 22, after payment of Lit. 1 billion.

January 28, 1975.—Rome. Wounding of attorney Tommaso Manzo, head of the legal department of the MSI's Rome federation.
May 6, 1975.—Rome. Political abduction of Supreme Court Judge Giuseppe Di Gennaro detailed to the Ministry of Justice. Released on May 11, after transfer of imprisoned NAP members to jails of their choice.
October 7, 1975.—Milan. Wounding of Cosimo Vernich, prison guard NCO.
January 28, 1976.—Rome. Wounding of Supreme Court Judge Pietro Margariti detailed to the Ministry of Justice.
February 9, 1976.—Rome. Wounding of public security NCO Antonio Tuzzolino.
April 21, 1976.—Rome. Wounding of Giovanni Theodoli, president of the Petrolium Association. (Responsibility also claimed by Armed Communist Formation.)
May 5, 1976.—Rome. Wounding of assistant state attorney Paolino Dell'Anno.
December 14, 1976.—Rome. Murder of public security patrolman Prisco Palumbo and wounding of deputy police commissioner Alfonso Noce and public security patrolman Renato Russo during a fire engagement.
March 22, 1977.—Rome. Murder of public security patrolman Claudio Graziosi and zoological guard Angelo Cerrai during attempted apprehension of NAP member.
April 18, 1977.—Milan. Wounding of Bruno Rucano, personnel manager, Vanossi (Corp.).

FRONT LINE (PRIMA LINEA—PL)

April 29, 1976.—Milan. Murder of Enrico Pedinovi, MSI provincial councilman.
June 22, 1977.—Pistoia. Wounding of Giancarlo Niccolai, Christian Democratic provincial deputy secretary and executive employee, Breda (Corp.).
June 24, 1977.—Milan. Wounding of Roberto Anzalone, M.D., provincial secretary of the participating physicians in the Medicare Program.
May 11, 1978.—Milan. Wounding of Mario Astarita, general manager, Chemical Bank, Milan Branch.
May 17, 1978.—Turin. Wounding of public security patrolman Roberto De Martini.
July 14, 1978.—Ciampino (Rome). Raid on railroad police station and wounding of public security patrolman Angelo Galloni.
July 19, 1978.—Turin. Raid on Assicurazioni Generali office and wounding of manager Salvatore Russo.
October 11, 1978.—Naples. Murder of Alfredo Paolella, Professor of Criminal Anthropology and court-appointed expert.
January 19, 1979.—Turin. Murder of prison guard Giuseppe Lo Russo.
January 29, 1979.—Milan. Murder of Emilio Alessandrini, assistant state attorney.
February 1, 1979.—Bagnolo di Cremasco (Cremona). Wounding of Carabinieri NCO Camillo Mangini and trooper Raffaele Giardiello.
February 5, 1979.—Turin. Wounding of prison guard Raffaela Napolitano.
March 9, 1979.—Turin. Wounding of public security patrolman Gaetano D'Angiullo and bystander student Emanuele Jurilli during a fire engagement.
March 13, 1979.—Cologno Monzese (Milan). Wounding of four Carabinieri with an explosive device.
June 22, 1979.—Naples. Wounding of Stanislao Salemme, retired employee of the Social Security Administration.
July 18, 1979.—Turin. Murder of snack bar owner Carmine Civitate.
September 21, 1979.—Turin. Murder of Carlo Ghiglieno, manager, Planning Branch, FIAT (Corp.).
October 5, 1979. Turin. Wounding of Piercarlo Andreoletti, managing director, Praxi (Corp.).
November 30, 1979. Naples. Raid on a juvenile delinquents' facility and wounding of prison guard Salvatore Castaldo.
December 11, 1979. Turin. Raid on the Industrial Management School and mass leg-shooting of five instructors: Diego Pannoni, Vincenzo Musso, Lorenzo Varone, Angelo Scordo, Paolo Turin; and five students: Tommaso Prete, Pietro Tangari, Gianpaolo Giuliano, Renzo Poser, Giuliano Dall'Occhio.
December 15, 1979.—Rivoli (Turin). Wounding of Carabinieri NCO Massimo Asnaghi and trooper Giovanni Serra during a fire engagement.
February 5, 1980.—Monza (Milan). Murder of Paolo Paoletti, manager, Icmesa (Corp.).
February 6, 1980.—Rome. Murder of public security patrolman Maurizio Arnesano. (Responsibility also claimed by Armed Revolutionary Nuclei.)
February 7, 1980.—Milan. Murder of William Waccher, an extra-Parliamentary activist accused of being a "spy."

February 26, 1980.—Viareggio (Lucca). Wounding of bank employee Enzo Bono during armed robbery of Banco del Monte.
March 19, 1980.—Milan. Murder of Judge Guido Galli.
May 2, 1980.—Rome. Wounding of Sergio Lenci, architect/designer of the Spoleto prison.
August 11, 1980.—Viterbo. Armed robbery of Banca del Cimino and murder of Carabinieri NCO Pietro Cursoli and trooper Ippolito Coltellessa.
September 22, 1980.—Rome. Assault on an army truck and wounding of soldier Giovanni Faga.
February 4, 1981.—Turin. Fire engagement with a public security motor patrol during the armed robbery of a jewelry store and wounding of two bystanders.
May 15, 1981.—Mongrendo (Vercelli). Murder of private security guard Antonio Rinaldo during a bank robbery.
November 13, 1981.—Milan. Murder of public security patrolman Eleno Anello Viscari.
January 21, 1982.—Siena. Murder of Carabinieri troopers Enzo Terzilli and Giuseppe Savastano and wounding of NCO Augusto Barna during fire engagement after robbery of a Monte dei Paschi di Siena Bank branch.

APPENDIX XIII

Chronology of Significant Terrorist Actions Perpetrated by Minor Subversive Formations of Communist Inspiration

OCTOBER XXII CIRCLE (CIRCOLO XXII OTTOBRE)

October 5, 1970.—Genoa. Abduction for ransom of Sergio Gadolla, member of a family of wealthy constructors. Released on October 11 after payment of Lit. 200 million.
March 26, 1971.—Genoa. Murder of bank messenger Alessandro Floris during armed robbery of Cassa di Risparmio.

CLASS WARFARE FOR COMMUNISM (GUERRA DI CLASSE PER IL COMUNISMO)

June 19, 1975.—Rivalta (Turin). Wounding of Paolo Fossat, executive employee, FIAT (Corp.).

CLASS STRUGGLE (LOTTA DI CLASSE)

November 11, 1975.—Milan. Wounding of Valerio Di Marco, personnel manager, Leyland-Innocenti (Corp.).

ARMED STRUGGLE FOR COMMUNISM (LOTTA ARMATA PER IL COMUNISMO)

March 26, 1976.—Brembate di Sopra (Bergamo). Wounding of Dietrich Herkech, executive employee, Philco (Corp.).
July 8, 1977.—Rome. Murder of Mauro Amati, mistaken for a prison guard.
January 4, 1978.—Piedimonte S. Germano (Frosinone). Murder of Carmine De Rosa, Chief of Security, Cassino Plant, FIAT (Corp.). Wounding of Giuseppe Porta, Chief of Security, Turin Plant, FIAT (Corp.).
February 10, 1978.—Prato (Florence). Murder of notary Gianfranco Spighi during armed robbery in his office.
June 28, 1981.—Milan. Wounding of graphics technician Sergio Albertario.

COMMUNIST COMBAT UNITS (UNITA COMBATTENTI COMUNISTE—UCC)

June 14, 1976.—Rome. Political abduction of meat dealer Giuseppe Ambrosio. Release made contingent upon distribution of 710 quintals of meat at below market prices. Victim freed by Carabinieri the following day before distribution could take place.
November 23, 1976.—Rome. Wounding of Carlo Alberto Alfieri, owner of "Maraldi" Book Store.
March 29, 1977.—Rome. Wounding of Vito Morgera, Director General of the Government Printing Office.
January 20, 1978.—Florence. Murder of public security patrolman Fausto Dionisi and wounding of patrolman Dario Atzeni in front of local prison.

WORKERS' MOVEMENT (MOVIMENTO OPERAIO)

November 26, 1976.—Cassino (Frosinone). Wounding of Rocco Favolaro, accountant, Labor Union Office, FIAT (Corp.).

ARMED WORKERS' SQUADS (SQUADRE OPERAIE ARMATE)

February 18, 1977.—Turin. Wounding of Bruno Diotti, foreman, FIAT (Corp.).
January 31, 1978.—Milan. Wounding of Armando Girotto, executive employee of a graphics firm.
June 22, 1978.—Pomigliano d'Arco (Naples). Wounding of Salvatore Napoli, technician, Alfa Romeo (Corp.).

COMBATANTS FOR COMMUNISM (COMBATTENTI PER IL COMUNISMO)

May 19, 1977.—Seveso (Milan). Wounding of Giuseppe Ghetti, medical officer.

COMBATANT WORKERS' SQUADS (SQUADRE OPERAIE COMBATTENTI)

June 6, 1977.—Milan. Wounding of Giuseppe D'Ambrosio, foreman, Sit-Siemens (Corp.)

COMBATANT WORKERS FOR COMMUNISM (OPERAI COMBATTENTI PER IL COMUNISMO)

June 27, 1977.—Pollena Tracchia (Naples). Wounding of Vittorio Flich, executive employee, Alfa Romeo (Corp.).

COMBATANT COMMUNIST FRONT (FRONTE COMBATTENTE COMUNISTA)

July 7, 1977.—Abano Terme (Padua). Wounding of Antonio Garzotto, journalist with daily *Il Gazzettino.*
December 18, 1978.—Padua. Wounding of attorney Vincenzo Filosa.
September 26, 1979.—Padua. Wounding of Angelo Ventura, university professor.

PROLETARIAN ARMED SQUADS (SQUADRE ARMATE PROLETARIE)

December 2, 1977.—Turin. Wounding of psychiatrist Giorgio Coda.
September 26, 1977.—Varese. Detonation of explosive device in front of local Carabinieri station and wounding of trooper Michele Venci.
January 15, 1979.—Verese. Wounding of Francesco Lombardo, medical officer of local prison.
February 13, 1979.—Turin. Arson of Navona, construction firm, and wounding of employees Mario Navona, Gianluigi Brancatelli, and Giuseppe Sirze.

ARMED NUCLEI FOR TERRITORIAL COUNTERPOWER (NUCLEI ARMATI PER IL CONTROPOTERE TERRITORIALE)

January 7, 1978.—Rome. Murder of Franco Bigonzetti and Francesco Ciavatta and wounding of Vincenzo Senieri, MSI activists, during attack on a local MSI section.

UNEMPLOYED WORKERS' ARMED NUCLEI (NUCLEI ARMATI OPERAI DISOCCUPATI)

January 11, 1978.—Milan. Wounding of jewelry store owners Santo Marini during robbery.

COMBATANT WORKERS' UNITS FOR COMMUNISM (REPARTI OPERAI COMBATTENTI PER IL COMUNISMO)

February 16, 1978.—Milan. Wounding of Domenico Segala, personnel manager, Alfa Romeo (Corp.), and bystander Simona Croce.

PROLETARIAN COMBAT SQUADS (SQUADRE PROLETARIE DI COMBATTIMENTO)

April 10, 1978.—Turin. Wounding of gynecologist Ruggero Grio.
June 8, 1978.—Turin. Wounding of Giacomo Ferrero, M.D., MSI sympathizer.
November 14, 1978.—Pisa. Detonation of explosive device in front of IACP offices and wounding of two bystanders.
November 14, 1978.—Florence. Detonation of an explosive device in the building where the Provincial Directorate of the Ministry of the Treasury is located and wounding of two bystanders.

November 17, 1978.—Turin. Wounding of Mario De Orsola, Christian Democratic sympathizer.
December 15, 1978.—Florence. Wounding of Judge Silvio Bozzi.
January 24, 1979.—Milan. Wounding of Battista Ferla, hospital attendant and FLO-CISL labor union representative.

COMBATANT NUCLEUS FOR COMMUNISM (NUCLEO COMBATTENTE PER IL COMUNISMO)

April 22, 1978.—Padua. Wounding of Ezio Riondato, President, EDIT (Corp.).
December 15, 1978.—Musile di Piave (Venice). Wounding of Franco Pilla, pharmacist.

ARMED PROLETARIANS FOR COMMUNISM (PROLETARI ARMATI PER IL COMUNISMO)

May 6, 1978.—Novara. Wounding of Giorgio Rossanigo, medical officer of local prison.
May 8, 1978.—Milan. Wounding of Diego Fava, Medicare Administration (INAM).
June 6, 1978.—Udine. Murder of prison guard NCO Antonio Santoro.
October 23, 1978.—Poiano (Verona). Wounding of prison guard Arturo Nigro.
April 19, 1979.—Rome. Murder of public security patrolman Andrea Campagna.

ARMED COMMUNIST PROLETARIAN PATROLS (RONDE PROLETARIE COMUNISTE ARMATE)

May 10, 1978.—Milan. Wounding of Franco Giacomazzi, executive employee, Montedison (Corp.).

POPULAR LIBERATION ARMY (ESERCITO POPOLARE DI LIBERAZIONE)

July 20, 1978.—Rome. Detonation of an explosive device against the Prefecture and wounding of a public security patrolman.

ARMED NUCLEI FOR COMMUNISM (NUCLEI ARMATI PER IL COMUNISMO)

August 10, 1978.—Bergamo. Detonation of an explosive device in front of the local Carabinieri station and wounding of trooper Giovanni Vergottin.

PROLETARIAN PATROL (RONDA PROLETARIA)

September 19, 1978.—Rome. Wounding of Paolo Lanari, PCI militant.

COMBATANT COMMUNIST YOUTH FRONT (FRONTE GIOVANILE COMUNISTA COMBATTENTE)

October 20, 1978.—Padua. Wounding of Gianpaolo Mercanzin, university official.

COMMUNIST COMBATANT FORMATIONS (FORMAZIONI COMBATTENTI COMUNISTE)

November 8, 1978.—Patrica (Frosinone). Murder of state attorney Fedele Calvosa and his escort members, security guard Giuseppe Pagliei and driver Luciano Rossi.

COMMUNIST ATTACK UNITS (REPARTI COMUNISTI DI ATTACCO)

November 13, 1978.—Milan. Wounding of Mario Marchetti, former medical officer of the S. Vittore Prison.
February 10, 1980.—Milan. Wounding of Mario Miraglia, executive employee, CECOF.

COMMUNIST GUERRILLA (GUERRIGLIA COMUNISTA)

November 27, 1978.—Rome. Murder of Saadi Vaturi and wounding of Amleto De Masi, merchants.
December 15, 1978.—Rome. Murder of drug addict Enrico Donati inside private club, "Speak Easy."

WORKERS' ORGANIZATION FOR COMMUNISM (ORGANIZZAZIONE OPERAIA PER IL COMUNISMO)

December 19, 1978.—Mestre (Venice). Detonation of explosive device against Regional Industrialists Federation and wounding of a bystander.

ORGANIZED COMRADES FOR COMMUNISM (COMPAGNI ORGANIZZATI PER IL COMUNISMO)

January 10, 1979.—Rome. Murder of Stefano Cecchetti and wounding of Allesandro Donatone and Maurizio Battaglia, rightist militants.

COMBATANT ARMED SQUADS (SQUADRE ARMATE DI COMBATTIMENTO)

January 10, 1979.—Castel Cisterna (Naples). Wounding of private security guard Domenico Manna during attempt to place an explosive charge at Alfa Sud (Corp.).

ORGANIZED COMRADES—RED STRIKE FORCE (COMPAGNI ORGANIZZATI DELLA VOLANTE ROSSA)

January 26, 1979.—Rome. Wounding of MSI political candidate Nicola Nusca and his son Antonello.
March 7, 1980.—Rome. Detonation of an explosive device against premises of MSI daily *Il Secolo d'Italia* and wounding of seven printers.
March 12, 1980.—Rome. Murder of Angelo Mancia, MSI activist.

ARMED PROLETARIAN COMBAT SQUADS (SQUADRE ARMATE PROLETARIE DI COMBATTIMENTO)

February 1, 1979.—Turin. Wounding of Grazio Romano, medical officer of the local prison.
May 18, 1979.—Turin. Wounding of obstetrician Domenica Nigra.

COMMUNIST NUCLEI FOR PROLETARIAN GUERRILLA (NUCLEI COMUNISTI PER LA GUERRIGLIA PROLETARIA)

February 16, 1979.—Milan. Murder of Pierluigi Torreggiani and wounding of Alberto Torreggiani, goldsmiths.
February 16, 1979.—S. Maria di Sala (Venice). Murder of Lino Sabbadini, butcher.

ARMED PROLETARIAN PATROLS (RONDE ARMATE PROLETARIE)

February 26, 1979.—Canale di Ceregnano (Rovigo). Wounding of artisan shop owner Mario Toso in the explosion of a device placed in front of his dwelling.

TERRITORIAL PATROL OF SOUTHERN ROME (RONDA TERRITORIALE ROMA SUD)

March 1, 1979.—Rome. Detonation of an explosive device in the commercial offices of Benito Vinci and wounding of employee Cinzia Giacomini.

ANTI-FASCIST PROLETARIAN NUCLEUS (NUCLEO PROLETARIO ANTIFASCISTA)

March 3, 1979.—Rome. Wounding of public security NCO candidate Miro Brenzaglia.

ORGANIZED PROLETARIAN GROUPS (GRUPPI PROLETARI ORGANIZZATI)

March 7, 1979.—Rome. Wounding of municipal policemen Carlo Accardi, Alfio Morganti, and Vincenzo Feliciotti by incendiary devices hurled against a police vehicle.

WILD CATS (GATTI SELVAGGI)

March 13, 1979.—Bologna. Arson of press association "E. Marchi" offices and consequential murder of cleaning woman Graziella Fava.

COMMUNIST GUERRILLA (GUERRIGLIA COMUNISTA)

March 13, 1979.—Bergamo. Murder of Carbinieri trooper Giuseppe Currieri.

COMMUNIST PATROLS FOR TERRITORIAL COUNTERPOWER (RONDE COMUNISTE PER IL CONTROPOTERE TERRITORIALE)

April 8, 1979.—Rome. Detonation of an explosive device in front of Standa department store and wounding of public security patrolman Antonio Faro.

COMBAT UNITS OF THE COMMUNIST LIBERATION ARMY (REPARTI DI COMBATTIMENTO PER L'ESERCITO DI LIBERAZIONE COMUNISTA)

April 12, 1979.—Rome. Detonation of explosive device inside premises of real estate company "Magna Grecia" and wounding of owner Prudenza Ruggeri.

COMMUNIST PROLETARIANS FOR COUNTERPOWER (PROLETARI COMUNISTI PER IL CONTROPOTERE)

April 27, 1979.- Milan. Detonation of explosive device inside offices of SIAS and wounding of employees Maria Scaramba and Donata Amoruso.

COMMUNIST PROLETARIAN SQUADS (SQUADRE COMUNISTE PROLETARIE)

April 30, 1979.—Salesino (Padua). Wounding of one Carabiniere during arson attempt against local Carabinieri station.

ARMED PROLETARIAN COMBAT SQUADS OF THE COMMUNIST LIBERATION ARMY (SQUADRE PROLETARIE ARMATE DI COMBATTIMENTO PER L'ESERCITO DI LIBERAZIONE COMUNISTA)

May 11, 1979.—Turin. Detonation of an explosive device in front of a local Carabinieri station and wounding of trooper Erminio Baldari.

ARMED NUCLEI FOR WORKERS' POWER (NUCLEI ARMATI PER IL POTERE OPERAIO)

May 31, 1979.— Brescia. Detonation of an explosive device on the roof of the Christian Democratic provincial offices and wounding of public security patrolmen Bruno Cippini and Luigi Dello Preite.

PROLETARIAN COMBAT PATROLS (RONDE PROLETARIE DI COMBATTIMENTO)

July 13, 1979.--Turin. Wounding of bystander Antonio Versace during explosion in front of a snack bar.
December 7, 1979.—Leini (Turin). Wounding of industrialist Pietro Orecchia.

PROLETARIAN TERRITORIAL SQUADS (SQUADRE PROLETARIE TERRITORIALI)

July 13, 1979.—Turin. Murder of municipal policeman Bartolomeo Mana during robbery of Cassa di Risparmio di Druento Bank.

PROLETARIAN UNITS OF THE COMMUNIST LIBERATION ARMY (REPARTI PROLETARI PER L'ESERCITO DI LIBERAZIONE COMUNISTA)

November 30, 1979.—Rome. Wounding of gynecologist Giulio De Fabritiis.

COMMUNIST COMBATANT ORGANIZATION COMMUNIST ASSAULT UNITS (ORGANIZZAZIONE COMUNISTA COMBATTENTE REPARTI COMUNISTI D'ATTACCO)

December 21, 1979.—Turin. Wounding of Ezio Gavelli, laboratory chief, FIAT (Corp.).

PROLETARIAN COMBATANT ORGANIZATION (ORGANIZZAZIONE PROLETARIA COMBATTENTE)

January 28, 1980.—Rome. One person wounded during arson attempt in an apartment.

COMMUNIST TERRITORIAL NUCLEI (NUCLEI COMUNISTI TERRITORIALI)

January 31, 1980.—Settimo Torinese (Turin). Murder of Carlo Ala and wounding of Gianni Pecorin, private security guards, FIAT (Corp.).

ARMED ANTI-FASCIST GROUPS (GRUPPI ARMATI ANTIFASCISTI)

February 4, 1980.—Rovigo. Wounding of rightist sympathizer Benvenuto Farinella during arson attempt against his dwelling.

PROLETARIAN COMBATANT FORMATION (FORMAZIONE PROLETARIA COMBATTENTE)

February 25, 1980.—Rome. Murder of Christian Democratic militant Iolanda Rozzi resulting from arson attempt against her dwelling.

ORGANIZED ARMED PROLETARIAN GROUP (GRUPPO PROLETARIO ORGANIZZATO ARMATO)

February 23, 1980.—Rovigo. Wounding of bystander Graziella Marzolla during arson attempt against a snack bar usually frequented by rightist elements.

ORGANIZED COMRADES (COMPAGNI ORGANIZZATI)

March 10, 1980.—Rome. Murder of PSI card-carrying member Luigi Allegretti (mistaken identity).

PROLETARIAN COUNTERPOWER NUCLEI (NUCLEI DI CONTROPOTERE PROLETARIO)

March 20, 1980.—Rome. Wounding of bystander Delfio Monteresi during explosion in front of a snack bar.

ARMED GROUPS OF ORGANIZED PROLETARIANS (GRUPPI ARMATI PROLETARI ORGANIZZATI)

May 6, 1980.—Rome. Wounding of municipal policemen Giuseppe Milo and Ottorino Mazzucco.

MARCH 28 BRIGADE FOR COMMUNISM (BRIGATA 28 MARZO—PER IL COMUNISMO)

May 7, 1980.—Milan. Wounding of journalist Guido Passalacqua.
May 28, 1980.—Milan. Murder of Walter Tobagi, journalist with daily *Corriere della Sera*.

ARMED TERRITORIAL COMMUNIST GROUPS (GRUPPI COMUNISTI ARMATI TERRITORIALI)

June 19, 1980.—Milan. Wounding of private security guard Vincenzo Rutigliano.

ASSAULT NUCLEUS FOR TERRITORIAL LIBERATION (NUCLEO D'ASSALTO PER LA LIBERAZIONE TERRITORIALE)

July 3, 1980.—Naples. Wounding of Luigi Ammendola, M.D.

REVOLUTIONARY COMBATANT FORMATIONS (FORMAZIONI COMBATTENTI RIVOLUZIONARIE)

March 11, 1981.—Genoa. Wounding of private security guard Marafiotti during armed robbery of Banca Nazionale del Lavoro.

ARMED COMMUNIST REVOLUTIONARY NUCLEI (NUCLEI ARMATI COMUNISTI RIVOLUZIONARI)

June 19, 1981.—Rome. Wounding of Giuseppe Franconieri during raid on his agency "Nader."

POPULAR LIBERATION MOVEMENT (MOVIMENTO POPOLARE DI LIBERAZIONE)

June 28, 1981.—Naples. Explosion of device in front of Court of Appeals and wounding of public security patrolman Alberto Costanza.

COMMUNIST NUCLEUS (NUCLEO DI COMUNISTI)

September 18, 1981.—Milan. Murder of prison guard Francesco Rucci.

COMMUNIST FRONT FOR COUNTERPOWER (FRONTE COMUNISTA PER IL CONTROPOTERE)

December 1, 1981.—Vicenza. Wounding of Antonio Mundu, medical officer of local prison.

COMMUNIST COMBATANT NUCLEI (NUCLEI COMBATTENTI COMUNISTI)

January 3, 1982.—Rovigo. Detonation of an explosive device to facilitate a prison break and murder of one bystander and wounding of six others.

METROPOLITAN COMMUNIST FRONT (FRONTE COMUNISTA METROPOLITANO)

May 4, 1982.—Rome. Wounding of Headmaster Ida De Carlo and janitor Ciro Cipriani of the institute "Archimede."

OFFENSIVE RESISTANCE PROLETARIAN MOVEMENT (MOVIMENTO PROLETARIO DI RESISTENZA OFFENSIVA)

May 17, 1982.—Milan. Murder of rightist sympathizer Girolamo Scardigno.
November 18, 1982.—Milan. Murder of private security guard Erminio Carloni during attempted armed robbery of a Banco di Napoli branch.

NUCLEUS OF COMMUNISTS FOR THE CONSTRUCTION OF THE RED POWER SYSTEM (NUCLEO COMUNISTI PER LA COSTRUZIONE DEL SISTEMA DEL POTERE ROSSO)

October 8, 1982.—Corio Canavese (Turin). Murder of Carabinieri NCO Benito Atzei and wounding of trooper Giovanni Bertello during fire engagement.

ARMED PROLETARIAN POWER (POTERE PROLETARIO ARMATO)

December 3, 1982.—Rome. Wounding of Giuseppina Galfo, medical officer of Rebibbia Prison.

APPENDIX XIV

CHRONOLOGY OF SIGNIFICANT TERRORIST ACTIONS PERPETRATED BY MAJOR SUBVERSIVE FORMATIONS OF NEO-FASCIST INSPIRATION

NEW ORDER (ORDINE NUOVO) BLACK ORDER (ORDINE NERO)

November 20, 1974.—Savona. Murder of one tenant and wounding of seven others following detonation of an explosive device inside an apartment building.
July 10, 1976.—Rome. Murder of assistant state attorney Vittorio Occorsio.
February 2, 1978.—Naples. Wounding of Salvatore Di Maio, PCI militant.
February 12, 1978.—Rovigo. Detonation of explosive device against entrance of extraparliamentary Gruppo Sociale Rovigo premises and wounding of bystander Fabrizia Coltro.

ARMED REVOLUTIONARY NUCLEI (NUCLEI ARMATI RIVOLUZIONARI—NAR)

December 24, 1977.—Rome. Wounding of leftist student Massimo Di Pilla.
September 28, 1978.—Rome. Murder of Ivo Zini and wounding of Vincenzo Di Blasio, leftist sympathizers.
November 20, 1978.—Rome. Wounding of PCI militants Roberto Raparelli, Mauro Sanfilippo, and Angelo Misini during Molotov cocktail attack against a local PCI section.
December 27, 1978.—Rome. Wounding of PCI militant Ivo Nibbi with hand grenade.
January 9, 1979.—Rome. Shooting assault on Radio Citta Futura of the extraparliamentary left and wounding of five radio station operators: Anna Attura, Gabriella Zignone, Rosetta Padula, Carmela Ingafu, and Annunziata Miolli.
June 16, 1979.—Rome. Raid on the Via Cairoli section of the PCI and wounding of 23 activists with an explosive device.
October 9, 1979.—Rovigo. Murder of an extraparliamentary leftist Roberto Cavallaro.
December 17, 1979.—Rome. Murder of Antonio Leandri, mistaken for attorney Giorgio Arcangeli, a "spy."
February 6, 1980.—Rome. Murder of public security patrolman Maurizio Arnesano. (Responsibility also claimed by Front Line.)
April 4, 1980.—Naples. Wounding of Domenico Longobardi, director of the asylum for the criminally insane.
June 23, 1980.—Rome. Murder of assistant state attorney Mario Amato.
September 2, 1980.—Rome. Murder of printer Maurizio Di Leo, mistaken for *Il Messaggero* journalist Michele Concina.
September 11, 1980.—Rome. Murder of Francesco Mangiameli, leader of Third Position.
September 24, 1980.—S. Maria Capua Vetere (Caserta). Murder of retired prison guard NCO Alberto Contestabile and wounding of sister-in-law Maria Merola.
January 6, 1981.—Rome. Murder of rightist sympathizer Luca Perucci. (Responsibility also claimed by Communist Combatant Committees.)
October 21, 1981.—Rome. Murder of public security captain Francesco Straullu and patrolman Ciriaco Di Roma.
December 5, 1981.—Rome. Murder of public security patrolman Ciro Capobianco and wounding of patrolman Salvatore Barbuto.

March 5, 1982.—Rome. Armed robbery of Banca Nazionale del Lavoro branch and coincidental murder of bystander Alessandro Caravillani and wounding of public security patrolmen Antonio Petrillo and Paolo Espa and bystanders Alvaro Parlanti, and Olga Racio, and Alessandra Falsetti.
March 12, 1982.—Rome. Murder of state police agent Giuseppe Rapesta.
June 24, 1982.—Rome. Murder of state police agent Antonio Galluzzo and wounding of agent Giuseppe Pilon and bystander Anna Maria De Rio during fire engagement.
October 10, 1982.—Rome. Wounding of Banco di Santo Spirito employees Bruno Simonetta, Maurizio Colarelli, and Mario Bonifazi following detonation of explosive device.

APPENDIX XV

Chronology of Significant Terrorist Actions Perpetrated by Minor Subversive Formations of Neo-Fascist Inspiration

REVOLUTIONARY ACTION MOVEMENT (MOVIMENTO DI AZIONE RIVOLUZIONARIA—MAR)

November 22, 1973.—Milan. Abduction for ransom of industrialist Aldo Cannavale. Released on December 4, after payment of Lit. 350 million.

NATIONAL REVOLUTIONARY JUSTICE (GIUSTIZIA NAZIONALE RIVOLUZIONARIA)

December 26, 1977—Rome. Wounding of Roberto Giunta La Spada, journalist, *Radio Citta Futura.*

MILITANT FASCISM CLANDESTINE ORGANIZATION (ORGANIZZAZIONE CLANDESTINA FASCISMO MILITANTE)

December 19, 1978.—Naples. Wounding of finance guard NCO Walter Cainero.

BLACK ARMED CORPS (CORPO ARMATO NERO)

March 13, 1980.—Rome. Wounding of Settimio Di Segni, precious stones and metals dealer, during armed robbery.

ORGANIZED GROUP FOR DIRECT ACTION (GRUPPO ORGANIZZATO PER L'AZIONE DIRETTA)

May 28, 1980.—Rome. Murder of public security patrolman Franco Evangelista.

THIRD POSITION (TERZA POSIZIONE)

November 26, 1980.—Milan. Murder of Carabinieri NCO Ezio Lucarelli and wounding of NCO Giuseppe Palermo during an investigation.

APPENDIX XVI

Chronology of Significant Terrorist Actions Perpetrated by Subversive Individuals and Formations of Anarchist Inspiration

ANARCHIST GIANFRANCO BERTOLI

May 17, 1973.—Milan. Four murders and 31 woundings resulting from the detonation of an explosive device placed in front of the Police Headquarters of the Province of Milan during the unveiling ceremony of a bust in memory of murdered police security official Luigi Calabresi.

REVOLUTIONARY ACTION (AZIONE RIVOLUZIONARIA—AR)

March 30, 1977.—Pisa. Wounding of Alberto Mammoli, former medical officer of the local prison.
September 19, 1977.—Turin. Wounding of Leone Ferrero, journalist with *L'Unita.*

REVOLUTIONARY ASSOCIATION OF ANARCHISTS (ASSOCIAZIONE RIVOLUZIONARIA ANARCHICI)

March 28, 1979.—Rome. Detonation of an explosive device inside an apartment building and wounding of tenants Bernardino Berardi and Orlanda Fiori. (Responsibility also claimed by Proletarian Patrols for Territorial Counterpower.)

APPENDIX XVII

Chronology of Significant Terrorist Actions Perpetrated by Subversive Formations of Separatist Inspiration

Sardinia

RED BARABAGIA (BARBAGIA ROSSA)

May 26, 1980.—Orani (Nuoro). Detonation of explosive device against Carabinieri barracks and wounding of trooper Guerino Contu.
June 9, 1981.—Orune (Nuoro). Murder of school teacher Nicola Zidda (mistaken identity).
August 6, 1981.—Nuoro. Demise of Carabinieri trooper Santo Lanzafame wounded during fire engagement of July 31, 1981.

SARDINIAN REVOLUTIONARY COMMITTEE FOR COMMUNISM (COMITATO RIVOLUZIONARIO SARDO PER IL COMUNISMO)

August 14, 1980.—Orgosolo (Nuoro). Detonation of explosive device against public security precinct and wounding of patrolmen Simone Puledda and Elia Cuccu.

APPENDIX XVIII

A Terrorist Action Perpetrated by a Subversive Formation of "Internationalist" Inspiration

COMMUNISTS GROUPS FOR PROLETARIAN INTERNATIONALISM (GRUPPI COMUNISTI PER L'INTERNAZIONALISMO PROLETARIO)

October 10, 1981.—Rome. Detonation of an explosive device inside the Embassy of Guatemala and wounding of the doorman.

APPENDIX XIX

Chronology of Significant Terrorist Actions Perpetrated by Foreign Formations (or Agents of Foreign Governments) with "Transnational" Objectives

ARMENIAN TERRORIST ACTIONS

June 9, 1977.—Rome. Murder of the Turkish Ambassador to the Holy See (Justice Commando for the Armenian Genocide).
December 9, 1979.—Rome. Detonation of explosives against offices of British Airways and El Al and consequential wounding of nine bystanders (Secret Army for the Liberation of Armenia).
March 10, 1980.—Rome. Detonation of explosives against offices of Turkish Airlines and consequential murder of two bystanders and wounding of 14 others (Secret Army for the Liberation of Armenia).
April 17, 1980.—Rome. Wounding of the Turkish Ambassador to the Holy See and his body guard (Justice Commando for the Armenian Genocide).
October 3, 1980.—Rome. Detonation of an explosive device against the offices of the Turkish Airlines and consequential wounding of 2 bystanders (Armenian Organization for the Liberation of Armenia).
November 10, 1980.—Rome. Detonation of explosives against the offices of Swiss Air and of the Swiss Federal Railways with consequential wounding of 7 bystanders (October Third Organizations).
January 27, 1981.—Milan. Detonation of explosives against the offices of Swiss Air and of the Swiss Tourist Agency and consequential wounding of 2 bystanders (October Third Organization).
October 25, 1981.—Rome. Wounding of Turkish diplomat Gokberg Eregenekon (Secret Army for the Liberation of Armenia).

LIBYAN VICTIMS OF TERRORIST ACTIONS BY FELLOW NATIONALS

March 21, 1980.—Rome. Murder of El Rteimi Salem Mohamed.
April 19, 1980.—Rome. Murder of Aref Gialil Abdul.
May 5, 1980.—Rome. Murder of Abdallah El Khazmi.
May 20, 1980.—Rome. Murder of Bouhjar Mohamed Fouad Ben Harami.
May 21, 1980.—Rome. Wounding of Fezzani Mohamed Salem.

June 11, 1980.—Milan. Murder of Azzedin Lahderi.
June 11, 1980.—Rome. Wounding of Mohamed Saad Bygte.
February 24, 1981.—Fiumicino (Rome). Wounding of Ahmad Arafan Hajat El Jabi and Farzat Benhjat El Jabi.

PALESTINIAN TERRORIST ACTIONS AND TERRORIST ACTIONS AGAINST PALESTINIANS

December 17, 1973.—Fiumicino (Rome). Commando action at the International Airport entailing the employment of automatic weapons and explosives resulting in 34 murders and 41 woundings.
August 4, 1980.—Rome. Raid on the Embassy of Iraq resulting in 2 murders and 1 wounding.
August 9, 1981.—Fiumicino (Rome). Detonation of an explosive device against El Al offices at International Airport and wounding of 3 passengers (May 15th Organization for the Liberation of Palestine).
October 9, 1981.—Rome. Murder of Majid Abu Shrar by an explosive device planted in his hotel room (member of Central Committee of Al Fatah and PLO information officer).
June 17, 1982.—Rome. Murder of Nazih Mattak, member of the PLO's Rome Press Office and of Kamal Hussein, PLO representative.
September 10, 1982.—Rome. Raid on the Rome synagogue resulting in 1 murder and 36 woundings of worshippers (Black Lebanon Organization).

APPENDIX XX

TERRORIST MASSACRES OF STILL DUBIOUS IDEOLOGICAL INSPIRATION BUT GENERALLY ATTRIBUTED TO "NEO-FASCIST" ELEMENTS

December 12, 1969.—Milan. Sixteen deaths and 90 woundings caused by the detonation of an explosive device inside the Piazza Fontana branch of Banca Nazionale dell'Agricoltura.
May 28, 1974.—Brescia. Eight deaths and 100 woundings caused by the detonation of an explosive device in Piazza della Loggia.
August 4, 1974.—S. Benedetto di Val di Sambro. Twelve deaths and 44 woundings caused by the detonation of an explosive device on the "Italicus" express.
August 2, 1980.—Bologna. Eighty-five deaths and 181 woundings caused by the detonation of an explosive device in the 2d class waiting room of the railroad Station.

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TERRORISM IN ITALY: AN UPDATE REPORT, 1983-1985

REPORT

OF THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

FOR THE USE OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
Washington, DC, July 17, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
Washington, DC

DEAR MR. CHAIRMAN: In July of 1984, I forwarded to you a report entitled "Terrorism and Security: The Italian Experience." This report contained a thorough examination of the terrorist phenomenon in Italy and the security measures developed in response at both the government and private levels from 1968 through 1982. The author of this superb, well-received work was Dr. Vittorfranco S. Pisano, an internationally recognized authority in the field of terrorism.

Because of the growing importance of the area of terrorism and counterterrorism, I asked Dr. Daniel J. Boorstin, the Librarian of the Library of Congress, to agree to fund the study, and I also asked Dr. Pisano to prepare an update of his report. Both were kind enough to agree. It is with great pleasure that I transmit to you the results entitled "Terrorism in Italy: An Update Report, 1983–1985."

Sincerely,

JEREMIAH DENTON,
Chairman, Subcommittee on
Security and Terrorism.

FOREWORD

Since the beginning of 1983, domestic and transnational groups have continued to engage in serious acts of terrorism and subversion in Italy. Such acts include direct attacks against the United States and NATO.

U.S. diplomat Leamon R. Hunt, Director-General of the Multinational Force and Observers (MFO), was murdered in Rome by the Red Brigades, possibly in cooperation with Middle Eastern extremists. The Italian editor of NATO News, Mr. Leonetto de Leon, suffered the bombing of his Rome residence by the Communists Struggling Against Imperialism and Armaments. The Italian Government has evidence that the domestic pacifist movement, whose slant is strongly anti-Western, has been infiltrated by terrorist elements. Remnants of Front Line, another Italian Terrorist group of Communist inspiration, entertains logistical/operational links with Direct Action and the Lebanese Armed Revolutionary Faction, two Paris-based terrorist formations known for their anti-American violent activism. All Red Brigades tracts and communiques of these years contain anti-NATO and anti-U.S. exhortations. The U.S. Embassy in Rome was the objective of a projected car-bomb attack by Lebanese terrorists. In addition, during the recent wave of anti-NATO "Euroterrorist" attacks throughout Western Europe, the language of the Red Brigades was adopted in the responsibility claims of non-Italian formations.

In the light of the specifically anti-American nature of ongoing terrorist activity in Italy and in consideration of the continuing influence of the Italian terrorist model, Senator Denton, chairman of the Subcommittee on Security and Terrorism, has asked that the Committee print this update to an earlier report, "Terrorism and Security: The Italian Experience," which covered the period 1968–1982. The original report and this update have been prepared by Dr. Vittorfranco S. Pisano, an internationally recognized expert on Italian terrorism. I believe this update report will be a useful resource in the Committee's efforts to study the problems of international terrorism as it impacts on our Nation.

STROM THURMOND,
Chairman, Committee on the Judiciary.

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TERRORISM IN ITALY: AN UPDATE REPORT, 1983–85

INTRODUCTION

The emergence, growth, and incipient decline of the Italian terrorist phenomenon between 1968 and 1982 were discussed in detail in an earlier report titled *Terrorism and Security: The Italian Experience.*[1] This supplementary report is intended to serve as an update and to provide an analysis of subsequent developments.

Reduced terrorist activity in 1983, 1984, and the first semester of 1985 confirms certain trends already discernible in the later stages of the period addressed in the previous study. There has in fact been a steady decline in the aggregate number of annual terrorist attacks and, to a degree, in the overall quality of terrorist operations.

Official statistics indicate that 421 terrorist incidents—including 2 murders and 16 woundings—were recorded in 1983, 339—including 6 murders and 11 woundings—in 1984, and 32—including 4 murders and 2 woundings—in Janaury-April of 1985. Not included in these statistics are a few additional incidents of apparent terrorist nature but still under investigation. Among the latter, particularly serious was a train bombing perpetrated on December 23, 1984, which caused 15 deaths and 131 injuries.

Other trends of this period reflect continued dissidence within the terrorist fold as well as repeated failure on the part of all terrorist formations to operate as a force capable of uprooting or simply paralyzing democratic institutions. Moreover, these groups did not even fully recovery from the unprecedented setbacks suffered throughout 1982 because of systematic law enforcement operations, timely intelligence collection, and the confessions of repentant or disassociated terrorists.

On the other hand, several indicators attest to the fact that terrorism continues to serve as a tool in the hands of organizations and groups—domestic and foreign—entertaining broader subversive designs. Despite the proven inadequacy of the "armed struggle" to bring about the collapse of the present system of government or to alter the country's international political alignment, terrorist warfare is attracting a new generation of recruits. Likewise, seasoned veterans at large and in the prisons continue to believe in the validity of their battle. According to the Government, there are at large 295 identified terrorists of the left and 68 of the

[1] *Terrorism and Security: The Italian Experience,* Report of the Subcommittee on Security and Terrorism of the Committee on the Judiciary, U.S. Senate, 98th Cong., 2d sess., November 1984, Washington, DC.

right.[2] At the same time, the prison population includes approximately 1,250 terrorists of the left and 350 of the right.[3]

Other terrorists and extremists are combining political objectives with common crimes, including drug and arms trafficking. And, limitedly to elements of the leftist milieu, there has been a return to sophisticated situational analyses in terrorist resolutions and tracts.

Potentially more worrisome are still other developments. There is evidence of ongoing efforts to establish or reconstitute a broad support base through the exploitation of economic and social tensions and through the infiltration of ideological groups. While this applies primarily to the terrorist left, similar efforts are being made by elements of the terrorist right as well. A noteworthy target of this strategy is the pacifist movement. There is also evidence of an increasing process of internationalization, particularly with respect to leftist objectives and operations. Finally, the presence in Italy of transnational formations with specific anti-Western designs raises additional disquieting questions.

Red Brigades (Brigate Rosse—BR)

Within the Communist or Marxist-Leninist ideological component of the Italian terrorist spectrum, the BR are the oldest surviving organization. Despite their reduced operational rhythm during the last 3 years, the BR still constitute the foremost terrorist menace. Before addressing their current operational/logistical structure and estimated personnel strength, it is worth focusing upon their recent actions.

The BR can be credited with three major operations, all of which were carried out in Rome at the rate of one per year.

THE GIUGNI CASE

On May 3, 1983, as he was heading for his office building at approximately 7:30 p.m., Gino Giugni, professor of labor law at the University of Rome, was called by name by a young couple on a motor-scooter. Giugni instinctively turned and was fired upon by the girl on the rear seat of the scooter. Three out of seven 9mm-long pistol rounds hit and wounded the victim. The couple on the scooter immediately fled.

Shortly after the shooting, a caller announced to the Roman daily *Il Messaggero:* "We have executed the pig Gino Giugni, a representative of the capitalist bourgeoisie. War on the social pact!" The caller concluded his message by identifying himself as a spokesman of the Communist Combatant Party, that is, the "militarist" faction of the BR. Giugni, who is hailed as the principal drafter of pro-labor legislation enacted in 1970 and referred to as the "Workers' Statute," had also contributed to the drafting of the recent economic agreement of January 22, 1983, on the cost of labor, which the BR consider exploitative of the proletariat.

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[2] As reported by the President of the Council of Ministers to the Parliament on Feb. 7, 1985. See *Corriere della Sera,* Feb. 8, 1985, p. 2 (Milan).

[3] Atti Parlamentari, Camera dei Deputati, IX Legislatura, *Relazione sulla Politica Informativa e della Sicurezza,* semestre 23 Maggio–22 Novembre 1984, presentata alla Presidenza l'11 Febbraio 1985, Nota Integrativa, 21 Marzo 1985, Roma, p. 45.

The BR telephone message is indicative of their intention to kill rather than wound. It has therefore been deduced that the young age, inexperience, and apparent nervousness of the assailants luckily turned this action into an abortive murder attempt. The following day Bruno Seghetti, one of the "unbent" BR members then on trial in Turin for other indictments, read a "proclamation" in court confirming the responsibility of the BR. He branded Giugni as "a man for all seasons" and defined the cost-of-labor agreement as "the most serious attack against the Workers' Statute, which Giugni himself had assisted in enacting." A written communique, which traditionally constitutes the formal and final BR responsibility claim, was subsequently issued in Rome. Also in keeping with standard BR procedure, it included a "resume" of the victim's career and reiterated the "reasons" behind the attack.

In addition to the BR's clear intent to enter the arena of capital-labor relations and affix thereto their typical revolutionary mark, the attack on Professor Giugni was planned to coincide with the electoral campaign leading to the parliamentary elections of June 1983.

THE HUNT CASE

On February 15, 1984, at approximately 6:30 p.m., a FIAT 128 with two males aboard blocked the chauffer-driven armored sedan in which U.S. diplomat Leamon R. Hunt was returning to his Rome residence. One of the men got out of the vehicle and fired two or more bursts from a Soviet Kalashnikov assault rifle against the rear window of Hunt's sedan. One sole bullet hit and mortally wounded Hunt, whereas his driver was unhurt. The attackers fled the scene in a back-up vehicle driven by a third member of the commando group.

Hunt's demise took place in the hospital 2 hours later. He had been posted in Rome at the beginning of 1983 as Director General of the Multinational Force and Observers (MFO)—generally referred to as the Sinai peacekeeping force—with administrative headquarters in the Italian capital, pursuant to an agreement signed by Italy on June 12, 1982.

One hour after the incident, a caller telephoned a Milan private radio station, "Radio Popolare," claiming responsibility on behalf of the same BR faction that had wounded Professor Giugni. The telephone message stated: "The imperialist forces out of Lebanon! No to the missiles in Comiso! Italy out of NATO!" A second verbal claim was made the following morning in a Genoa court room, where other die-hard red brigadists were standing trial. The written paternity claim was produced 1 day later in Rome. This communique accused the Italian Government of spending on defense to the detriment of socioeconomic needs.

All too clearly, in this case the BR were addressing both domestic and international issues. Significantly, preparations were underway at the Sicilian installation of Comiso to host 112 Cruise missiles as part of NATO's modernized European theater nuclear force.

THE TARANTELLI CASE

On March 27, 1985, shortly before noon, Ezio Tarantelli, economist and professor at the University of Rome, was about to drive away from the University when two men approached his sedan on foot and one of them opened fire with a Scorpion submachinegun. Fifteen rounds hit the intended victim, who died instantly. Before fleeing, the killers attached to the windshield of Tarantelli's car BR Pamphlet No. 20, which is currently still subject to investigative secrecy in accordance with the rules of criminal procedure, as is the subsequent written responsibility claim. However, press accounts report that both documents attack the Government, the Employers Association (Confindustria), and the Italian Confederation of Free Labor Unions (CISL), because of their role in limiting the cost-of-living index clause over which a popular referendum was pending at the time of the assassination. Tarantelli himself was an economic advisor of CISL. Just as in the previous two cases, Tarantelli was targeted by the Combatant Communist Party or militarist faction of the BR.

The overall sophistication of these terrorist actions, which reflect an operational crescendo, is comparable to that repeatedly demonstrated by the BR in the course of analogous operations during the period 1977–1981.

The attacks on Giugni, Hunt, and Tarantelli were accompanied by secondary actions at violent and nonviolent levels. In some cases, however, conclusive evidence of BR paternity is limited. The following is a selective survey of what might be termed complementary BR activity during the same period.

BEHAVIOR IN COURT

On March 16, 1983, which marked the fifth anniversary of the BR abduction of the late Christian Democratic President and former Premier Aldo Moro, red brigadist Lauro Azzolini, on trial in Milan for other crimes, addressed the chief judge of the court and shouted: "Your Honor, we wish to remind you that today is March 16th and for us it is a great feast!" During the same hearing, red brigadist Flavio Amico yelled at the court: "I will be offended if I am not sentenced to life imprisonment just like the comrades in Genoa and in Rome." Still another defendant, Biancamelia Sivieri, defiantly told the chief judge: "Your Honor, I cannot look at you in the face, because you make me vomit." [5] The following day, in a lighter vein, Azzolini attempted to recite before the same court a poem titled "Samson" and composed on a role of toilet paper. During another trial in Turin on May 16, 1983, the prosecutor requested the chief judge to order the separation of male and female BR defendants in consideration of the fact that two of them were committing "obscene acts" in court.

ABORTIVE OPERATIONS AND BARGAINING

On May 18, 1983, at approximately 4 p.m., a State Police patrol foiled an armed robbery directed against a Rome post office. One

[5] Statements reported in *La Repubblica*, Mar. 17, 1983, p. 11 (Rome).

red brigadist was immediately apprehended, another one fled, and the third barricaded himself in the postal facility with hostages. He finally surrendered more than 4 hours later, after being allowed to speak to an imprisoned fellow militant. The following day, the fugitive member of the commando—a young woman—turned herself in with the assistance of an attorney specialized in terrorist cases. The fact that the commando was part of the less organized "movementist"—as opposed to the militarist—faction of the BR may have had some bearing on the general outcome of this operation.

PRONOUNCEMENTS ON THE REVOLUTIONARY RECORD

On June 30, 1983, during the trial of the Turin BR "column," defendant Francesco Piccioni of the militarist faction denied all responsibility for the trial-unrelated June murder of State Attorney Bruno Caccia, which had been followed by telephone claims in Turin and in Rome by self-styled BR spokesmen. Piccioni coldly told the Turin Court:

> As militants of the BR and communist combatants we have amply demonstrated on very many occasions that we have no problems in claiming responsibility for actions carried out by our organization or in expressing our support for the practices of the revolutionary movement . . . Regrettably, we had nothing to do with the murder of the Chief Prosecutor of Turin.

Standard BR practices in fact corroborate Piccioni's allegation.

DISENGAGEMENT AND RETALIATION

On the evening of December 14, 1984, the militarist faction attempted to rob a Metro Security Express armored van that was transporting the cash collected by two Roman supermarkets. In the ensuing fire engagement with private security guards, red brigadist Antonio Gustini was killed and his companion Cecilia Massaro was wounded together with two security guards and a bystander. The other members of the BR commando, one of whom had opened fire with a Kalashnikov assault rifle, retreated from the scene. The following month, on January 9, 1985, Ottavio Conte, a young policeman assigned to a SWAT-type unit of the State Police, was murdered in a telephone booth in Torvaianica, a beach resort near Rome. According to a telephone call allegedly issuing from the BR, this action was in retaliation for the death of Gustini. His demise had already been commemorated by "unbent" red brigadists on trial in Rome for other crimes and BR "punitive" actions had also been announced in Court. Yet conclusive evidence of BR responsibility is still lacking, since the modalities of Conte's murder do not fully coincide with BR patterns.

The same consideration applies to a number of armed robberies that took place in the January 1983–June 1985 timeframe. If they are in fact the work of the BR, their perpetration was aimed at self-financing. It is also possible that some of these robberies are the joint work of disbanded red brigadists and common criminals. On the other hand, there is no knowledge whatsoever of BR-orga-

nized abductions during this period for either demonstrative or self-financing purposes.

A number of tentative conclusions may be drawn from the BR record of these years. Notwithstanding the cleavage between the "militarists," who consider themselves a revolutionary vanguard in the strictest Leninist sense of the term, and the "movementists," who favor greater revolutionary spontaneity and aim at immediate mass participation, BR tactics have not substantially changed. What suffered, instead, is the overall effectiveness of BR strategies.

At the same time, it is clear that the BR have attempted to cure—at least with partial success—the less than adequate compartmentalization of the past, which made it possible for repentant red brigadists to furnish to the police and to the judiciary information of capital importance thus crippling the BR organization at various hierarchical and geographical echelons. Indeed, between 1980 and 1983, these confessions, coupled with other law enforcement operations, had brought about the dismantling of broad strata of the BR structure.

The BR now appear to have achieved strict compartmentalization between the operational and logistical elements of their organization. In fact, post-1983 apprehensions of members of the support structure have not led to a substantive breach of the operational structure, which, in its turn, is now characterized by stricter internal compartmentalization. Moreover, new recruits increasingly tend to be part-time "irregulars" rather than full-time "regulars" as in the past and generally have a clean police record.[6] While those observations more readily apply to the militarist faction, it should be noted that regardless of approach—militarist or movementist—the BR are fighting the same battle aimed at achieving the same Communist objectives.

Personnel estimates drawn up in Italian judicial circles—prosecutors and investigating judges—indicate that current BR strength includes at least 100 "regulars" and no less than 300 "irregulars."[7] The former, as in the past, live in full clandestinity, while the latter combine the "armed struggle" with propaganda and other nonviolent revolutionary functions.

The strongest and most efficient unit remains the Rome "column," whose overall numerical composition is believed to include 120 elements.[8] Significantly, a peripheral section of Rome, comprising several south-side neighborhoods, is generally referred to in the media as "BR-City."[9] More difficult to assess in detail is the BR presence elsewhere in Italy and its organizational posture. Units of "column" or smaller size are reportedly located in Milan, Turin, Genoa, Naples, and the region of Tuscany. Moreover, considering the large number of red brigadists still at large and the proven acquisition of new recruits, the references in recent BR documents regarding the continuing existence of the "strategic direc-

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[6] Interviews granted to the media by key police officials, prosecutors, and investigating judges reflect a consensus regarding the restructured organization of the BR. See, for example, *Il Giornale Nuovo*, June 26, 1983 (Milan), *La Repubblica*, Feb. 8, 1984 (Rome), *L'Espresso*, Apr. 15, 1984 (Rome).

[7] See *L'Espresso*, Apr. 7, 1985, p. 9 (Rome).

[8] *Id.*

[9] See, for example, *L'Espresso*, Apr. 14, 1985, pp. 24-26 (Rome).

torate" are theoretically credible. Evidence regarding an "external column" in France will be discussed under a subsequent heading.

Moreover, the record reflects that operational bases, logistical depots, and hideouts are available to the BR, together with suitable weaponry for urban guerrilla warfare, such as 38 cal. revolvers, 9 mm-long semiautomatic pistols, Scorpion submachine guns, and Kalashnikov assault rifles. To these material assets should be added the rather fertile, albeit misguided, minds who are capable of drafting detailed sociopolitical analyses such as Pamphlets No. 19 and 20 of March 1984 and March 1985, respectively, and other leaflets and communiques whose style is becoming more readable and always less delirious. As it will be seen below, these documents also unprecedentedly attempt to strike a balance between domestic and international issues.

Front Line (Prima Linea—PL) and Organized Comrades for Proletarian Liberation (Compagni Organizzati per la Liberazione Proletaria—COLP)

PL used to serve as an umbrella organization for a plurality of minor groups whose aims and dynamics were roughly comparable to those of the movementist faction of the BR. By 1981, PL had practically ceased to exist as a viable terrorist organization, even though some members of its affiliate formations were still at large and part of its apprehended militants remained politically active in the prisons and in the courtrooms. PL's loose structure and the insufficient Leninist revolutionary indoctrination of its members contributed to the organization's comparatively rapid downfall. In April of 1983, during the Bologna trial of high-ranking members of its leadership, PL officially announced its self-dissolution. Subsequently, during judicial proceedings in Turin, former PL leaders stated that their present problem was "how to participate in new movements and how to become the interlocutors of the classist left and of the Italian Communist Party." In essence they were expressing continuing commitment to old ideals through nonviolent means. To be sure, the number of repentant or disassociated PL members is considerable. During the last 2 years, many of them turned to religious and family values and—to the public's surprise—often managed to procreate despite their status as prison inmates.

Of the few surviving PL affiliations or offshoots, the COLP are the only ones that has attracted repeated attention. Although the circumstances leading to their emergency are not altogether clear, the COLP were reportedly formed at the start of this decade, possibly under a different name, by PL members Sergio Segio and Susanna Ronconi. Their initial objective was to free prison inmates still committed to the "armed struggle." By late 1983, additional COLP objectives included the reorganization of PL and the development of new models of "social guerrilla." [10] Known COLP presence in Italy is circumscribed to the north of the country, but, together

[10] For background information, see *Il Messaggero*, Feb. 9, 1984, p. 17 (Rome), and *La Repubblica*, Oct. 15, 1983, p. 15 (Rome).

with other former PL militants, they constitute a principal element of the Italo-French terrorist connection.

Minor Communist Formations

Minor formations active during this period—be they satellites of the BR, former affiliations of PL, or groups connected to the extremist and violence-prone extraparliamentary Autonomy—have generally limited themselves to the perpetration of negligible damage to property. The following are notable exceptions.

In the early afternoon hours of January 29, 1983, a terrorist commando group that subsequently claimed responsibility under the name of Armed Proletarian Power (Potere Proletario Armato) overpowered assistant warden Germana Stefanini in the lobby of her building and forced her into her apartment, where she was "tried" and "sentenced" under an impromptu red banner. She was then led to an isolated area, forced into the trunk of a stolen car, and "executed" with a pistol. Stefanini's task at Rome's Rebibbia Prison was to check packages addressed to the inmates. Police investigators later determined that the murderers were also after a colleague of the victim who lived in the same building. While being held captive in her apartment, Stefanini had been coerced to call her colleague from the window and invite her for a visit, but the latter excused herself because her son was feverish. Some members of the same commando group, who were in contact with the movementist faction of the BR at the time of Stefanini's murder, later joined the BR and participated in the abortive post office robbery and hostage situation reported above.

On January 2, 1984, bystander Stanislao Ceresio, an employee of the State Railroad Administration, was killed in Portici (Naples), when the automobile of prison guard Giuseppe Monteleone exploded. Responsibility for the car bombing was claimed by the Proletarians for Communism (Proletari per il Comunismo), a formation believed to be connected to the BR. Significantly, a training center for prison guards is located in the Municipality of Portici.

A potentially disastrous incident took place in the Rome subway on February 9, 1985. A bag containing incendiary bottles exploded at approximately 11:20 a.m. in an empty car of Line A and seriously damaged it. Had the explosion taken place a few minutes earlier or later, passengers would have been aboard the same subway train. A responsibility claim was issued by the Workers Brigades (Brigate Operaie).[11] News agency ANSA first received a telephone call and then a leaflet was delivered to the Roman daily *La Repubblica*. The leaflet stated:

> This is not an act of violence, but an act of love against the daily exploitation of the labor force from the hinterland to the material places of its exploitation. This is not a protest, but a precise act of war.

[11] This group was heretofore unheard of in Rome, but a few terrorist actions had been perpetrated in Como in 1981 under that name.

A number of robberies that occurred during this period are also believed to be the work of minor terrorist formations in need of funds and equipment for their revolutionary purposes. One such example is the abortive armed robbery of a jewelry store in Bologna on December 14, 1984. A suspected female terrorist lost her life in this action.

Workers' Autonomy (Autonomia Operaia—AUTOP) and the Substrata of Communist Terrorism

As opposed to its record of previous years, comparatively low-keyed has also been the role of AUTOP, whole communism-oriented activists are estimated by the Government to number "tens of thousands" and are concentrated in the key regions of Latium, Veneto, Lombardy, and Campania.[12] In keeping with its tradition, AUTOP continues to serve as a reservoir for terrorist recruitment and support and still espouses subversive causes or attempts to subvert ideological groups.

In recent years, AUTOP has been particularly active in demonstrating in favor of an amnesty and other clemency measures vis-a-vis terrorist militants in prison and at large. Its contribution to "pacifist" activism will be addressed below.

The most resounding developments of this period include the escape to France of Professor Antonio (Toni) Negri, AUTOP's foremost ideologue, and the conclusion of the Rome trial against key as well as less important AUTOP militants for crimes committed before 1979.

The Radical Party (Partito Radicale—PR)—a libertarian and left-leaning political party with limited representation in Parliament—decided to run Professor Negri on its slate for the June 1983 parliamentary elections. Negri, who at the time was being tried by the Court of Assizes of Rome, was nevertheless elected in all three districts in which he was a candidate and opted to represent his Milan constituents.[13] While a certain percentage of the ballots cast in his favor is traceable to the PR's own electorate, Negri's election primarily constitutes a manifestation of AUTOP's political following as well as an indication of the numerical strength of circles close to the terrorist and/or extremist milieu. Negri obtained 13,521 votes in Milan, 26,389 in Rome, and 11,480 in Naples.[14] The total clearly exceeds 50,000 votes. Negri's election to the Chamber of Deputies—the lower house of Italy's bicameral Parliament—made his release from prison mandatory. Before the Chamber of Deputies could strip him of parliamentary immunity (as it ultimately did) in order to return him to prison, Toni Negri fled to bordering France.

The Rome trial of the 71 AUTOP members indicted for various crimes ranging from armed insurrection to subversion, from abduction to murder, and from armed robbery to violations of the gun

[12] Supra note 3, p. 23.

[13] Under Italian electoral law, a candidate may be included on a party slate in as many as three districts, but, if elected in more than one, the candidate must choose the district he/she wishes to represent.

[14] Camera dei Deputati, IX Legislatura, Servizio Prerogative e Immunita, *Risultati Elettorali del 26 Giugno 1983.* Roma, pp. 44, 180, and 214.

laws continued without Negri's presence on the defendants' bench. The verdict was finally handed down on June 12, 1984: 57 defendants were convicted and 14 were acquitted. The only charge that the court did not uphold was armed insurrection. Negri himself was sentenced in absentia to a 30-year prison term. In its verdict, the court defined Negri as—

> An individual who for a decade propagandized everywhere messages of hatred and violence and advocated the necessity to constitute an organization having a twofold program of aggression against the State: the incitement of the masses to [commit unlawful] appropriations, on one hand, and [the launching] of a vanguard attack, on the other.

The verdict also reads:

> He was the instigator, the principal, the organizers of those choices that characterized a long season of violence. [15]

Despite the prosecution and conviction of its "historic" cadres, AUTOP remains a pole of aggregation for sundry leftist extremists, usually referred to as "autonomists," who would otherwise operate in groups of negligible strength and face virtual isolation.

Vestiges of Anarchism

At the end of April of 1983, the Italian Anarchist Federation (Federazione Anarchica Italiana—FAI) held its 16th National Congress in Reggio Emilia. It was attended by over 200 delegates from various Italian cities and by several observers primarily from Spain, France, West Germany, and Japan. The prinicpal items on the agenda were "anti-militarism," "the nuclear issue," and "the struggle against repression." As it will be seen below, militant anarchists are an active and occassionally violent component of the pacifist movement. In September of 1984, an "international anarchist convention" was held in Venice to discuss "authoritarian trends and libertarian tensions in contemporary societies." But the most significant development at the symbolic level occurred in March of 1985 when the Municipal Council of Carrara authorized, by a bare majority vote, the erection of a monument to the memory of anarchist Gaetano Bresci, the assassin of King Umberto I at the beginning of the century. This anarchist project had previously been vetoed by the Municipal Council.

A definitive court decision is still pending with respect to a major terrorist action believed to have been perpetrated in unison by anarchist and rightist elements. The retrial—ordered by the supreme court—of anarchist Pietro Valpreda together with rightist extremists for a 1969 bank bombing in Milan, which caused 16 deaths and 90 injuries, began on December 12, 1984, before a Bari court. However, a recent incident is indicative of persistent tactics entailing anarchist presence in rightist circles. On May 8, 1985, a group of young anarchists posing as sympathizers of the Italian

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[15] *La Repubblica*, June 13, 1984, p. 6, and Apr. 17, 1985, p. 12 (Rome).

Social Movement (MSI)—a legal rightist party—worked their way directly under the MSI speakers' stand in Milan's principal square. When approached by alert policemen, who noticed that the anarchists were not applauding, five or six of them attempted to flee and accidentally dropped a concealed "Molotov cocktail." One was arrested and identified by the police as a notorious anarchist activist.

Separatism and Terrorist Violence

Separatism continues to be an issue that occasionally leads to terrorist violence in the island of Sardinia as well as in the South Tyrolean portion of the Trentino-Alto Adige region, which borders with Austria.

SARDINIA

The intertwined elements of banditry, separatist aspirations, and leftist ideology are still present in Sardinian criminal and politically extremist circles. A noteworthy and somewhat emblematic development of the period January 1983–June 1985 is the emergence of the Sardinian Armed Movement (Movimento Armato Sardo—MAS).

MAS first appeared on the Sardinian scene in June of 1983 under the reputed leadership of former shepherd and common criminal Annino Mele, who underwent a process of politicization while on the run from justice and mastered leftist terrorist phraseology to the point of declaring himself a supporter of the "armed struggle." The announced MAS platform is indicative of three objectives: Sardinian independence, sale of military installations on the island to the highest bidder, and an insular economy based principally on tourism. At the same time, MAS called for the punishment of those who destroy or undermine "the morality, proper way of living, and noble traditions" of Sardinian society and warned that it would "restore justice" where abuses are not cured.

By the end of 1983, MAS had claimed responsibility for six murders—some of which preceded the emergence of MAS under that name—and one abduction for ransom. However, the murder victims were witnesses, or relatives of witnesses, who testified in court against common criminals. The proceeds from the abduction, on the other hand, were to be used "to purchase arms." Two additional kidnapings for ransom are believed to be the work of elements connected to MAS. Moreover, in July of 1984, MAS leader Mele abducted journalist Michele Tatti of the daily *Unione Sarda* for a few hours in order to "grant an interview," which turned out to be a monologue on the objectives of the organization and on Sardinian society.

Although the ultimate aims of MAS are viewed by both the judiciary and the police forces as predominantly criminal, MAS or other criminal bands that may adopt the MAS model are in fact influenced by a subversive and terrorism-oriented environment.[16]

[16] The background of its reputed leader and the development of MAS are traceable in *La Repubblica,* May 8/9, 1983, p. 13, and July 8, 1983, p. 13 (Rome); *Europeo,* July 30, 1983, pp. 22–24

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The potential menace of the MAS syndrome is attested to in the semiannual intelligence report submitted to the Parliament by the Prime Minister in February 1984.[17]

Other separatist developments in Sardinia reflect a more pronounced political matrix. On the morning of January 20, 1984, the Carabinieri arrested Salvatore Meloni, who runs a transportation business in Torralba (Orestano). Meloni is also a leading figure of the Sardinian Independentist Party (Partidu Indipendentista Sardu—PARIS). The PARIS acronym means "All Together" in the Sardinian language. PARIS came to light in the early days of January and immediately drew public attention because of its fund-raising campaign. PARIS circular letters delivered to Sardinian residents and nonresidents stated: "We ask one thousand lire [roughly 50 cents in U.S. currency] to support our battle. If we do not receive a reply, it will be o.k. just the same: We will know who our enemies are." PARIS' militants are reportedly former members of the most extreme wing of the Sardinian Action Party (Partito Sardo d'Azione Psd'Az).[18]

In a recent interview, Michele Columbu, the best known spokesman of Psd'Az, which is represented in both the Italian Parliament and the European Parliament, indicated that his party's intention is eventually to seek independence from Italy, but through legal means.[19] In the last parliamentary elections—June 1983—the Psd'Az obtained 91,809 ballots and locally took fourth place among the 13 parties that ran candidates out of Sardinia.[20]

Most recently, on May 18, 1985, a Cagliari court handed down a decision to the effect that between 1979 and 1981 a group of Sardinian extremists had plotted to wage guerrilla warfare on the island in order to bring about the separation of Sardinia from Italy. In addition to Meloni, whose separatist activities predate PARIS, and 15 other conspirators, the court sentenced to prison Bainzu Piliu, professor of chemistry at the University of Cagliari and president of the Sardinian Independentist Front (Fronte Indipendentista Sardo—FIS).

SOUTH TYROL

On September 9, 1984, Northern and Southern Tyroleans dressed in their ethnic costumes marched together in Innsbruck, Austria, to commemorate Tyrolean patriot and historical figure Andreas Hofer. The march/rally/ceremony included slogans and posters calling for the independence of South Tyrol from Italy. While such manifestations are mostly indicative of ethnic/nationalistic aspirations, three groups continue to be regarded as an actual or potential source of separatist violence in Trentino-Alto Adige:

(Milan); *Corriere della Sera,* Aug. 8, 1983, p. 5 (Milan); *La Repubblica,* Aug. 23, 1983, p. 12 (Rome); *L'Espresso,* Sept. 4, 1983, pp. 18–19 (Rome); *La Repubblica,* Jan. 12, 1984, p. 12 (Rome); and *Corriere della Sera,* July 31, 1984, p. 5 (Milan).

[17] Atti Parlamentari, Camera dei Deputati, IX Legislatura, *Relazione sulla Politica Informativa e della Sicurezza,* semestre 23 Maggio–22 Novembre 1983, presentata alla Presidenza il 2 Febbraio 1984, Roma, p. 24.

[18] See *Europeo,* Feb. 4, 1984, p. 24 (Milan).

[19] See *Europeo,* July 7, 1984, pp. 107–108 (Milan).

[20] Supra note 14, p. 296.

(1) South Tyrolean terrorists of the 1960's who escaped to Austria;

(2) Austrian and German neo-Nazis who finance, organize, and coordinate propaganda and other forms of activism; and

(3) extremist members of the paramilitary Schuetzen (sharpshooters).[21]

Less than 4 months before the Innsbruck manifestation, South Tyrolean separatists Walter Gruber and Peter Paris had blown themselves up in Lena (Bolzano) on May 24, 1984, while handling explosives meant for a terrorist attack.[22] Successful dynamite attacks were conducted in November of the same year against power lines and oil pipelines. Ensuing police investigations led to the issuance of 10 arrest warrants against South Tyroleans holding Italian citizenship and against Austrian citizens. Less violent episodes occurred in early 1985, including the hurling of red paint cans against an Italina World War I memorial in Bolzano.

For the time being, the most visible reaction of local Italian ethnics (some of whom resorted in the past to anti-Germanic retaliatory violence) has been the unusually large number of ballots cast in favor of the rightist and highly nationalistic Italian Social Movement (MSI) in the May 1985 municipal elections. In Bolzano, the MSI became the relative majority party with 22.58 percent of the vote.

Terrorism of the Right

This period has been characterized by court-room related developments pertaining to neo-Fascist or neo-Nazi terrorist crimes committed before 1983 by militants belonging to New Order (Ordine Nuovo), Black Order (Ordine Nero), the Armed Revolutionary Nuclei (Nuclei Armati Revoluzionari—NAR), and less notorious formations. While various proceedings at the trial and appellate levels of jurisdiction resulted in the conviction of extremists responsible for individual murders and other selective acts of aggression, judicial efforts have shed no further light on the indiscriminate massacres of December 1969, May and August 1974, and August 1980, caused by the detonation of explosive devices and attributed to the terrorist right, but whose material perpetrators have yet to be identified.[23]

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[21] See *Panorama*, Sept. 24, 1984, pp. 37–38. The connection between South Tyrolean ethnic extremists and neo-Nazi elements across the Brenner Pass is also indicated in the Italian Prime Minister's semiannual intelligence report, submitted in August 1984. See Atti Parlamentari, Camera dei Deputati, IX Legislature, *Relazione sulla Politica Informativa e della Sicurezza*, semestre 23 Novembre 1983—22 Maggio 1984, presentata alla Presidenza il 9 Agosto 1984, Roma, p. 32.

[22] According to media reports, both men belonged to the Schuetzen. See *La Repubblica*, Nov. 11, 1984, p. 14 (Rome). Reportedly there are 5,000 Schuetzen organized into 138 companies.

[23] As mentioned in the discussion of anarchist-rightist ties, the retrial for the Milan massacre of December 1969 is now pending before an appellate court in Bari. A Venice court of appeals acquitted four neo-Fascists who had been convicted for the Brescia massacre of May 1974. Also acquitted by a Bologna appellate court were the rightist extremists previously convicted for the August 1974 massacre on the "Italicus" express train. The only development of relevance at the judicial level with respect to the Bologna massacre of August 1980 is the indictment of Gen. Pietro Musumeci, former deputy head of military intelligence (SISMI), and his assistant Pietro Belmonte. They are accused of fabricating false evidence in order to deviate ongoing investigations. The trial is currently being held in Rome. Accusations regarding connivance between the intelligence services and subversive or terrorist elements, particularly of the right, have contin-

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Another massacre nearly occurred on August 10, 1983, at 11:43 p.m., when the detonation of an explosive device failed to blow up the railroad tracks in the proximity of Vernio. The intended target was the Milan-Palermo train with 1,000 passengers aboard. Only two machinists were slightly wounded by flying glass. Responsibility for the attack was claimed by telephone callers in the name of Black Order.

Operationally, NAR remains the most menacing rightist formation, though in no way comparable to the Red Brigades at the other end of the Italian terrorist spectrum. Following a period of apparently limited activity, NAR reacquired visibility in early 1985. NAR could be responsible for the arson of a Rome movie theater on January 12, where a meeting of the rightist but lawful Italian Social Movement (MSI) was planned for the following day. The MSI–NAR relationship is one of hostility. However, besides NAR, the leftist Anti-Fascist Territorial Groups (Gruppi Antifascisti Terroriali) also claimed responsibility for this action. Less equivocably, two NAR militants were killed in Alessandria on March 25, when their Turin-licensed car was stopped for a routine document check and the four occupants opened fire on the police. They were transporting weapons, identification cards, documents, police-type equipment, and an air force uniform. On May 1, two presumable NAR members feigned a car breakdown on the Rome-L'Aquila highway. As a patrol car pulled over to offer assistance, the two terrorists fired on the patrolmen killing one—Giovanni Di Leonardo—and disabling the other—Pierluigi Turgioni. The terrorists then fled with the submachineguns and service pistols of the policemen. Investigators are also taking into consideration the possibility that NAR may be responsible for the above-reported attack on State Police SWAT-team member Ottavio Conte, whose murder was claimed by the Red Brigades as well as NAR.

Other rightist terrorists, having no precise organizational affiliation, also made the headlines during the period covered by this update report. On July 3, 1984, Rodolfo Crovace, whose curriculum includes violent rightist extremism and drug trafficking, was killed by the Carabinieri as he resisted arrest with two handguns. In December 1984/January 1985, a cluster of nighttime incendiary attacks took place in Roman secondary schools. The attackers left behind wall inscriptions extolling New Order and NAR. The early months of 1985 have likewise been marred by the emergence of so-called Fasces-bars frequented by motorcycle-riding vandals. Their language and symbols are borrowed from Nordic mythology and Nazi heraldry and their behavior reflects racial intolerance.

Nordic themes and Nazism accompanied by misguided moral fervor constitute the presumable motivation behind a series of bizarre murders whose disquieting implications came to light only in 1983. By February of that year, 8 to 10 murders perpetrated since August of 1972 had been attributed to, or claimed by, a group that operates under the name of Ludwig. The victims were stabbed, burned, or assaulted with a hammer and a hatchet. All of them

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ually been made in the press and political circles since the late 1960's; however, those allegations have not been corroborated to date by judicial findings. For statistical details on the above-mentioned four massacres see supra note 1, p. 86.

were either social deviants—gypsies, drug addicts, homosexuals, and prostitutes—or "unworthy" clergymen. These targetings took place in the Veneto region or in the municipality of Trento.

In May of 1983, Ludwig extended its sphere of action. It claimed responsibility for the burning of Milan movie theater "Eros" and consequential death of six spectators. Responsibility claims were also issued by Ludwig for the arson of two porno centers in Amsterdam and Munich in December 1983 and January 1984, respectively. The responsibility claims for individual actions or clusters of actions have consistently been written in runes, a Gothic script, and bear a Nazi eagle. In each instance, the message provided details regarding the material perpetration of the crime and ended with the salutation "Gott mit Uns."

On March 4, 1984, the Carabinieri arrested two young Verona residents and former classmates with a rightist background: Italian national Marco Furlan and German national Wolfgang Abel. They were immediately charged with the attempted arson of a Mantova disco and are currently under investigation for the other Ludwig-related crimes. A book found in Abel's Munich apartment narrates the preachings of Brother Ludwig, a fanatic follower of St. Francis of Assisi. Certain underlined passages could be the clue behind the Ludwig denomination. Although no further attacks have followed these arrests, written messages ostensibly issued by the Ludwig sect announced future actions. The investigators are reportedly searching for accomplices of the two suspects.

The most recent trends of rightist terrorism are schematically described in the last semiannual intelligence report of the Prime Minister, which is a "sanitized" version of broader findings by the Italian intelligence and security services. It points to continuing linkages between rightist extremists and common criminals. It attests to the ideological influence of the dissolved Black Order and National Vanguard (Avanguardia Nazionale) on more recent formations. It specifically notes the "cross-over" of militants from one formation to another or even their simultaneous presence in various rightist formations with discordant platforms. It detects reorganizational efforts on the part of NAR, particularly in Rome and in the Veneto region. It voices concern over the interest that rightist elements are displaying for Islamic extremism and views this development as a potential source of linkage between rightist and leftist groups.[24] An earlier semiannual intelligence report indicated unprecedented availability on the part of the terrorist left to cooperate with the terrorist right.[25]

Infiltration of the Pacifist Movement

The Italian pacifist movement, whose origins are traceable to the "Cold War" years, resurfaced en masse after the Government decided to support NATO's resolution of December 12, 1979, to modernize the European theater nuclear force (TNF) in response to the deployment of the Soviet SS-20 missiles. Subsequent Italian decisions pertaining to defense and foreign policy have likewise met or-

[24] Supra note 3, pp. 26-29.
[25] Supra note 17, p. 29.

ganized pacifist opposition.[26] The exploitability of the pacifist issue for subversive and violent purposes gradually attracted the attention of extremist and terrorist organizations whose long-range political aims are Marxist-Leninist, anarchist, or separatist. In fact, the nature, composition, and dynamics of the Italian pacifist movement facilitate exploitment and infiltration.

Italy's peace movement is made up of two principal components. One is inspired by Marxist/radical ideologies. The other is inspired by Christian/liberal ones. However, within each of these components there are marked differences not only in political platforms, but also in the pacifist approach itself. Each component draws additional support from unaffiliated elements—groups as well as individuals—who believe in the pacifist cause and express their pacifist commitment through the structures and activities organized by the parties and/or entities that are part of those components. Supportive nonaffiliated elements include conscientious objectors, ecologists, antinuclear energy activists, intellectuals, and idealists.

On the Marxist/radical side of the pacifist spectrum, the principal actors are the Italian Communist Party (PCI), remnants of the self-dissolved Democratic Party of Proletarian Unity (PDUP), Proletarian Democracy (DP), the Radical Party (RP), the League for Unilaterial Disarmament, and Struggle for Peace. On the Christian/liberal side, the principal actors are the Christian Associations of Italian Workers (ACLI), Pax Christi, the Reconciliation Movement, Christians for Socialism, and Christians for Dissent.

The most significant role in the overall deployment of the pacifist forces is played by the PCI, Italy's second largest party, whose organizational capability and capillary structures constitute the backbone of the pacifist movement. As opposed to PDUP, DP, and PR, all of which advocate unilateral disarmament, the PCI favors East-West negotiations for the reduction and ultimate elimination of nuclear armaments, but simultaneously opposes the deployment of the Cruise and Pershing II missiles in Western Europe, despite current Soviet nuclear superiority in the European theater.[27] In

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[26] TNF modernization entails, inter alia, the deployment of 112 Cruise missiles in Italy. The selection of the Sicilian town of Comiso as the pertinent missile site was made by the Italian Government on Aug. 7, 1981. Initial missile deployment in Comiso began in 1984. Sixteen missiles are reportedly in place at this writing. In accordance with other innovative governmental decisions of this period, Italian military contingents have taken part in the United Nations Interim Forces in Lebanon (UNIFIL) since July 26, 1979; in the multinational peace-keeping force in Lebanon from Aug. 26 to Sept. 12, 1982, and from Sept. 26, 1982, to Feb. 26, 1984; in the Multinational Force and Observers (MFO)—whose administrative headquarters are Rome-based—since Apr. 25, 1982; and in the multinational minesweeping operations in the Red Sea from Aug. 22 to Oct. 7, 1984.

[27] The following statement, widely circulated by the PCI during the June 1983 parliamentary elections campaign, reflects its nuanced stance which is ultimately nonsupportive of NATO:

"Do you prefer the rearmament race, with its attendant and ever-increasing danger of war, or the gradual reduction of armaments and the resumption of detente? It is a well known fact that Italian policy has opted for rearmament. Our government, chaired by the Christian Democratic Party and supported by a five-party coalition, was the first one in Europe to say yes to the Euromissiles and, in 1983, it appropriated 12 thousand billion lire for armaments. But do you really want Italy to become an atomic target? Or are you in agreement with us in wanting: First, the interruption of the works at the Comiso base. Second, even if an agreement is not reached in Geneva within 1983, the continuation of negotiations without installing the missiles. Third, simultaneously with an adequate reduction of the missiles in the USSR, the non-installation of the American missiles in Western Europe. Fourth, the dynamic commitment, with a genuine will toward a freeze of all nuclear armaments in the world, to commence a real reduction. This is because there are neither good bombs nor bad bombs: they are all terrible. On June 26, you can vote for a rearmament policy or for a peace policy. If you want peace, vote PCI. And remember: he who does not vote is silent. And he who is silent consents to rearmament."

essence, the PCI calls for negotiations with the U.S.S.R. from a position of Western weakness.[28]

Noteworthy because of its unequivocal pro-Soviet alignment is the aforelisted Struggle for Peace (Lotta per la Pace). It was founded by retired Air Force General and former PCI Senator Nino Pasti. This organization is an affiliate of the Soviet-run World Peace Council. According to Pasti, Soviet armaments are merely defensive, whereas the objective of NATO is the military elimination of world communism.[29]

The organizations and groups that make up the Christian/liberal component of the pacifist movement are frequently motivated by spiritual values intermingled with leftist earthy objectives. Their policies generally favor cooperation with Marxist or Marxist-oriented parties and formations in the interest of humanitarian goals.

Clearly, Italian pacifist activism constitutes a movement rather than a tight organization. Since its structures are loose, the movement must rely upon cooperation among groups whose ultimate aims are not homogeneous. While each organization or group preserves at least formal autonomy, it individually lacks, with the exception of the PCI, the potential for mass mobilization.

To counterbalance its organizational weakness, the pacifist movement has adopted a pyramidal structure consisting of a "national coordination" committee, "regional coordination" committees in each of Italy's 20 regions, and hundreds of local committees at the municipal level. Nevertheless, while this loose structure enables the movement to plan and conduct a variety of pacifist demonstrations through joint efforts, it falls short of providing sufficient facilities and funds. This problem is largely solved by relying on the capillary structures of the PCI, its youth organization (FGCI), its affiliated labor union (CGIL), PCI-run and PCI relative-majority municipalities,[30] and the Italian Recreational and Cultural Association (ARCI). ARCI's president and the majority of its 1,300,000 members are also PCI members or sympathizers. Moreover, ARCI, which has 14,000 clubs throughout the country and a 20,000-member affiliation known as the Environmental League, is endowed with a suitable budget largely derivable from its multifaceted role in the entertainment field.

Pacifist manifestations in Italy take on various forms of expression, the majority of which are adopted from the experience of the German "Greens" and adroitly adapted to the Italian scene.

The basic and intrinsically dynamic form of pacifist expression is the march (or converging marches) followed by a rally. Alternative techniques include "human chains" to symbolize solidarity and

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[28] Since the mid-1970's the PCI has officially discarded its preclusions against NATO, albeit in equivocal language. Yet, it generally continues to side with USSR over foreign policy issues. Worthy of note is the position of the rank-and-file vis-a-vis NATO. PCI provincial congresses held in early 1983 reflect that the opposition and "abstention" vote of the rank-and-file regarding Italian participation in NATO reached in many cases the 30-percent and above, for example, 30 percent in Brescia and Turin; 35 percent in Trieste, Massa-Carrara, Imperia, and Brindisi; 38 percent in Caserta and Catanzaro; 40 percent in Prato; 47 percent in Bari; 49 percent in Salerno and Cosenza; 51 percent in Reggio-Calabria; 52 percent in Lucca; 55 percent in Chieti; and 65 percent in Viterbo. Obviously the official party stance does not always take precedence over the traditional values of the rank-and-file.

[29] See *L'Espresso*, Oct. 4, 1981, p. 12 (Rome).

[30] In 1983, out of approximately 8,000 municipalities, 384 were PCI run and 1,579 had a PCI relative majority.

"die-ins," to dramatize the effects of war. Marches and rallies make extensive use of changed political slogans.

These slogans are a recurrent indicator of the anti-American and anti-Western feelings of many participants. The following example lose their rhyme effect in the English translation, but are nevertheless to the point: "Reagan, mind your business; go back to the movie screen to play cowboy!"; "Reagan, stick a missile up your rear: a flower will sprout from your mouth!"; "Reagan, you moron, withdraw the neutron bomb!"; "Reagan, pistol and bomb wielder, you will be the only one to shoot!"; "The only nuclear head we like is Reagan's head against the wall!"; "It's enough to chase away the servants of CIA: peace is not Utopia!"; "Red Italy! Reagan in a ditch!"; "From Sicily to Lombardy, one shout: Americans go away!"; and "Italy out of NATO!"

In concomitance with the march rally techniques, pacifist activists frequently organize unofficial referendums as a form of moral suasion. Some of these address armaments in general. Others are concerned with specific local issues such as nuclear energy plants or firing ranges.

The pacifist movement can also count on "de-nuclearized municipalities," including Bologna (Emilia-Romagna), Leghorn (Tuscany), and Vittoria (near Comiso, Sicily). These are nothing other than PCI-run or PCI-relative majority townships, where the local municipal council has the numerical strength to pass resolutions—obviously not binding on the central government in Rome—to the effect that nuclear armaments and munitions are unwanted in the municipality. In addition to the statement of principle inherent in such resolutions and their propaganda value, these municipal governments provide support and logistical structures for pacifist activities, for example, headquarters for the various coordination committees, mailing addresses having an ostensible character of officiality and premises for conferences, exhibits, films, and the like.

Out-door and in-door manifestations are supplemented by writings directly published by the activist groups themselves or elsewhere in the press. The most elaborate effort of this nature is a book put out in 1983 by the Radical Party through its Research Institute for Disarmament, Development, and Peace (IRDISP). Polemically titled "What the Russians Already Know and the Italians Must Not Know," this publication lists—by region, province, and municipality—NATO, U.S., and Italian installations on the peninsula and the islands of Sicily and Sardinia. The argument of its authors is that these military forces and facilities serve only the purpose of rendering Italy a target for multiple devastation, while, on account of their cost, they foreclose the possibility of developing needed civilian structures and services.[31]

Although the pacifist protest is primarily directed against nuclear armaments in Italy—the so called Euromissiles—a number of other issues have been and/or still are the target of pacifist activism. They include Italian participation in the multinational peacekeeping forces in Lebanon (1982–1984) and in the minesweeping operation in the Red Sea (1984), the presence of U.S. military forces

[31] IRDISP, *Quello che i Russi già Sanno e gli Italiani non Devono Sapere,* Rome, 1983.

in Italy, Italian arms sales on the world market, military-service related accidents, the safety of commercial air travel vis-a-vis military aircraft, conscientious objection, the alleged disproportion of the defense budget, and even the yearly military parade in the center of Rome to celebrate the anniversary of the proclamation of the Republic.

The plurality of issues pacifism addresses, the variety of social groups pacifist issues attract, the latent anti-Western state of mind of the pacifist activitists, and the aggregative looseness of the pacifist structure unquestionably make the pacifist movement a fertile ground for extremist and even terrorist infiltration and agitation.

The Prime Minister, on the basis of information provided by the intelligence and security services, first expressed this concern in the semiannual intelligence report submitted to the Parliament on July 5, 1983. [32] In the subsequent report, submitted on February 2, 1984, the Prime Minister referred to "increasing pseudo-pacifist and anti-militarist activities with clear anti-NATO connotations." [33] The next report, submitted on August 9, 1984, addressed the "ferment [within] pacifist, anti-militarist, and anti-nuclear movements . . . by extremist groups in connection with mass demonstrations." [34] Moreover, that report attests to the presence of "provocateurs." The most recent one, submitted on February 11, 1985, reiterates the same dangers and, in the context of the anti-NATO and anti-Western wave of terrorist attacks perpetrated in Europe during the pertinent semester, the report recalls related Red Brigades goals. [35]

The schematic information presented in the semiannual intelligence reports is corroborated by other open-source data relative to the degenerative phenomena that occur in the course of pacifist militancy. Such phenomena are most frequently detectable in Comiso, the very fulcrum of pacifist agitation in Italy. Demonstrations in front of the gates of the missile site regularly entail "sit ins" aimed at blocking military and military-related transit in order to disrupt military operations. This form of "passive resistance" and "civil disobedience" has from time to time given way to threats and violence. For example, in August of 1983, a group of "pacifists" paint-sprayed on the security police vehicles the words: "We will kill you all." In November of the same year, a policeman who attempted to prevent the recurrence of such conduct was physically attacked. On other occasions, police car tires were slashed.

Moreover, the pacifist militants have purchased through an alleged public subscription three tracts of land, two of which border with the Comiso missile installation. They are called "The Green Vineyard," "International Meeting Against Cruise—(IMAC)," and "Cobweb" and were reportedly bought for Lit. 37 million, 12 million, and 35 million, respectively.[36] IMAC's "staff" includes anar-

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[32] Atti Parlamentari, Camera dei Deputati, VIII Legislatura, *Relazione sulla Politica Informatica e della Sicurezza,* semestre 23 Novembre–22 Maggio 1983, presentata alla Presidenza il 5 Luglio 1983, Roma, p. 27.

[33] Supra note 17, p. 42.

[34] Atti Parlamentari, supra note 21, p. 32.

[35] Supra note 3, p. 21.

[36] See *Corriere della Serga,* Nov. 14, 1983, p. 2 (Milan).

chist elements. The twofold purpose of these "camps" is to serve as pacifist centers and living quarters for permanent or rotating groups and as staging areas for clandestine penetrations into the missile site. These raids are conducted for sketching purposes—as demonstrated by repeated arrests followed by charges of espionage—or for demonstrative slogan-writing within the installation. The most representative raid occurred during the night between Good Friday and Holy Saturday of 1984, when two women from the "The Cobweb" camp negotiated the protective fence and subsequently spray-painted slogans on the installation's water tower and 23 military vehicles.[37] Another significant incident was reported on Janaury 15, 1985. According to the press, a detailed map of the installation was found in a Comiso post office together with a letter addressed to London's *New Statesman.*[38]

A substantive portion of the agitation in Comiso is coordinated by the Unitary Committee for Disarmament and Peace (CUDIP), headed by Giacomo Cagnes, formerly the Communist mayor of Comiso. The presence in CUDIP of members of Workers' Autonomy (AUTOP), whose preferential relationship with the leftist terrorist fold was discussed above, has been confirmed by Cagnes himself.[39]

Unlawful tactics in conjunction with pacifist activities are not limited to Comiso. One such tactic is called "fiscal objection" and is practiced in various areas of the country. It is nothing other than the refusal to pay a percentage of the personal income tax equal to the defense-spending percentage of the national budget. This practice falls right in line with AUTOP's rent and utility bills "proletarian reduction." As of November 1983, there were 1,649 cases of "fiscal objection" on record, as opposed to 419 during the previous year. Reportedly, fiscal objectors include three Members of Parliament—Gianluigi Melega and Roberto Cicciomessere of PR and Mario Capanna of DP—as well as Bishop Luigi Bettazzi, president of Pax Christi.[40] Another initiative in support of conscientious objection is aimed at organizing disobedience and sabotage in the armed forces by draftees. Although conceptualized by Catholic pacifists, it parallels the activities of the Proletarians in Uniform (PID) of the early 1970's, that is, groups of Marxist-Leninist agitators within the military establishment.

Moreover, during pacifist marches and demonstrations, AUTOP participants resort to tactics generally ranging from disturbance of the peace to acts of vandalism. However, AUTOP elements have also set off, within the timeframe of planned pacifist manifestations, detonations of explosive against more or less representative targets. Two incidents of this nature are particularly serious. On September 10, 1983, a group called New Armed Partisans for Communism damaged with five explosive charges a national television transmitter in Trent and caused a blackout. A responsibility leaflet dropped off at the site of the incident states in part:

> Against the disinformation of national radio-television, against those who prepare war and the armaments

[37] See *L'Espresso,* Aug. 12, 1984, pp. 7–8 (Rome).
[38] See *Corriere della Sera,* Jan. 15, 1985, p. 5 (Milan).
[39] See *Panorama,* Nov. 7, 1983, p. 62 (Milan).
[40] See *Europeo,* Sept. 10, 1983, p. 26 (Milan).

> rp . . . against dismissals and unemployment; for the mobilization of the masses, for the proletarian cause, from Trent to Sicily, resistance now and forever.

The second one took place Rome on July 27, 1984, when a group that claimed responsibility under the name of Communists Struggling Against Imperialism and Armaments bombed the residence of Leonetto De Leon, Italian editor of *NATO News.* His wife and son were injured. This heretofore unheard of terrorist formation is believed to be an offshoot of AUTOP.

During the period January 1983–June 1985, there has also been an increased and more dynamic interest in the pacifist issue on the part of the Red Brigades (BR). In *Politics and Revolution (Politica e Rivoluzione),* a book authored by imprisoned and unbent red brigadists Prospero Gallinari, Bruno Seghetti, Franceso Piccioni, and Andrea Coi, "the movements against war, the deployment of the missiles and nuclear [energy], and even the ecology [movements]" are defined as "an ensemble of proletarian antagonism." The authors propose "liaison between combatant initiative and these mass movements." [41] Moreover, virtually all BR writings of this period include, as a minimum, anti-NATO and anti-"Euromissiles" statements, as most dramatically exemplified by the communique issued after Mr. Hunt's assassination.

Finally, pacifist ferment in Sardinia has had a contagious effect on the island's separatist extremists. In January 1984, the above discussed Sardinian Independentist Party (PARIS) demanded from the U.S. Government a payment of $5 billion as rear rent for the submarine base at La Maddalena. It remains to be seen whether this demand will be followed by terrorist attacks. As it is, the independentist platform excludes the NATO presence.

Most difficult to assess is the numerical strength of full-time infiltrators within the pacifist movement, as opposed to the thousands of AUTOP extremists and the hundreds of anarchists available for the exploitation of pacifist initiatives. An official indication of the number of full timers dates back to September 1984. At that time, the Prime Minister reported to the parliamentary intelligence oversight committee that 70 suspected terrorists and supporting elements were active in the anti-nuclear, anti-militarist, and pacifist organizations.[42] The presence of foreign activists and/or agents of foreign governments in the Italian pacifist movement will be addressed under the next heading.

Internationalization of Italian Terrorism and the French Connection

The period January 1983–June 1985 has been marked by increased concern over the internationalization of Italian terrorism, one of whose principal aspects is the so-called French connection. However, the matter of international linkages or even patron state support is not an altogether new development.[43] In fact, pre-1983

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[41] Quoted in *L'Espresso,* Sept. 16, 1984, p. 8 (Rome).
[42] See *La Repubblica,* Sept. 11, 1984, p. 7 (Rome).
[43] Supra note 1, particularly pp. 28–35, 38, and 40–41.

circumstantial and testimonial evidence relative thereto has been corroborated and/or expanded upon in a confidential report prepared by the Executive Committee on the Intelligence and Security Services (CESIS) on March 31, 1983, under the title of "International Implications of Terrorism," [44] and subsequently declassified by a parliamentary committee responsible for holding hearings on the abduction and murder of Aldo Moro (1978) and, more generally, on terrorism in Italy.

That report deserves careful examination for a better understanding of significant precedents and their bearing upon the timeframe covered by this update. The following is a summary of the salient portions of the declassified intelligence report.

THE PALESTINIAN CONNECTION

Immediately after Moro's abduction, Mario Moretti of the Red Brigades (BR) was contacted by representatives of Hyperion, "a Paris structure under the cover of a language school which was to coordinate—apparently under the direction of the Soviet KGB, as stated by several repentant terrorists—the operations of various subversive groups in Europe: IRA, ETA, NAPAP, RAF."[45] Moretti accepted Hyperion's proposal to lend international scope to the BR and was then introduced to a Paris-based representative of the PLO's Marxist minority faction.

As a result of this and subsequent meetings, the BR acquired from the PLO two shipments of weapons. The first was introduced into Italy through a French-Italian mountain pass toward the end of 1978, while the second was made available to the BR in Cyprus and brought to Italy in the summer of 1979. As opposed to the first, which included both East and West European weapons, the second shipment consisted exclusively of West European ones. Some of these weapons were distributed among the various BR "columns" and at least one—a Kalashnikov rifle—was given to, and used by, the Sardinian separatist and BR-connected Red Barbagia (Barbagia Rossa).

Other aspects of the PLO–BR agreements encompassed assistance to the BR abroad, including Paris and Angola, and access to training camps in Lebanon. In return, the BR would store in Italy part of the furnished weapons for future PLO use and would conduct or coordinate, upon request, attacks against Israeli and Jewish targets in Italy on behalf of the PLO. The intelligence report notes that at the beginning of 1982, Soviet-made weapons wrapped in Arabic-language newspapers were discovered in a BR storage facility in Montello near Treviso. Moreover, when red brigadist Bruno Seghetti was captured in May 1980, he was in possession of an English-language note with the Rome address of the Israeli Ambassador and military attaché. Interestingly enough, Seghetti was not familiar with the English language.

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[44] CESIS, "Implicazioni Internazionali del Terrorismo" in Senato della Repubblica—Camera dei Deputati, VIII Legislatura, *Relazioni di Minoranza della Commissione Parlamentare d'Inchiesta sulla Strage di Via Fani sul Sequestro e l'Assassinio di Aldo Moro e sul Terrorismo in Italia*, Roma, 1983, Doc. XXII, No. 5, Volume Secondo, pp. 369-396.

[45] *Id.*, p. 379.

Leftist terrorist formations, other than the BR, also entertained Palestinian contacts through former "autonomist" Maurizio Folini, who, in July-August 1978, brought from Lebanon to Italy a boat-cargo of East-European weapons. Though not originally intended for the Italian terrorist left, these weapons were ceded with Soviet consent. Folini, who was accompanied by a militant of the Communist Revolutionary Committees (Comitati Comunisti Rivoluzionari—CO.CO.RI), enjoyed freedom of movement in Lebanon and Syria because of his Palestinian contacts. Moreover, a number of repentant terrorists believed that he was a KGB agent.

THE EAST EUROPEAN CONNECTION

In addition to the Hyperion-KGB connection referred to above, the report briefly addresses or corroborates more direct linkages between Italian extremists/terrorists and Eastern Europe. These include, inter alia, the contacts of Giangiacomo Feltrinelli—the leftist revolutionary ideologue and publisher who accidentally blew himself up in 1972—with the intelligence services of the U.S.S.R. and Czechoslovakia; the presence in Czechoslovakia from 1973 to 1974 of BR fugitives Peili and Franceschini; a list of Italians who underwent political and terrorism training in the U.S.S.R., Czechoslovakia, Cuba, and Albania up to 1978; and a contribution of Lit. 70 million to Workers' Autonomy (AUTOP) in 1979 from Czechoslovakia through the automobile manufacturing firm SKODA.

Still, according to the intelligence report, the testimony of repentant terrorists—Savasta, Cianfanelli, Peci, Rossana Mangiameli, Pietro Mutti, and Gino Aldi—refers to close relations, particularly with respect to the supply of weapons, between the Soviet and Bulgarian intelligence services, on one hand, and minor Italian terrorist formations, on the other, long before 1981—the year that the BR made contact with the Bulgarian intelligence services through a cousin of red brigadist Loris Scricciolo. However, the BR-Bulgarian connection is deemed to have been of short duration because of the public disclosure of revelations concerning the attempt on the life of Pope John Paul II and the abduction of General James L. Dozier.

The report concludes this heading by referring to a document authored by Giovanni Senzani—the reputed leader of the movementist faction of the BR—and seized at the time of his arrest in January 1982. It reflects Senzani's belief that the KGB was "in a position to pilot the activity of the major European and Palestinian terrorist organizations for anti-Western purposes." Moreover, in Senzani's view, the KGB could "manipulate simultaneously groups of the extreme right and of the extreme left" and "had planted its agents in the militarist faction of the BR." [46] The intelligence report comments that apart from any assessment of Senzani's conclusions, the fact remains that he held a "privileged" position in the clandestine terrorist milieu.

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[46] Supra note 44, pp. 385-386.

The report once again refers to the aforementioned Hyperion. It lists two of its principal representatives—Swiss-born Francoise Tusher and Italian-born Corrado Simioni (the latter "recruited by the KGB in Paris" [47])—as promoters of the International Center for Popular Culture with offices at 14 Rue de Nanteuil, Paris, which remained through 1982 the principal point of contact between European and Palestinian terrorist groups and Italian militants of the BR, Front Line (PL), the Communist Combat Units (Unità Combattenti Comuniste—UCC), and AUTOP. Thereafter, it served as a meeting point for Armenian, Palestinian, Irish, and Italian extremists. Another Paris-based support network for Italian terrorist fugitives was the Unitary Collective for the Liberation of Political Prisoners.

According to the report, Gloria Cesari Grunbaum, a Roman-born French citizen by marriage, a former member of the Italian extremist organization Ongoing Struggle (Lotta Continua), a resident of France since 1975, and an active participant in said Unitary Collective, is suspected of providing liaison for Italian terrorists in Italy and France. Grunbaum's presence was also noted in the International Center for Expanded Space for Freedom (CINEL), a satellite of the Soviet-run World Peace Council and of the Henri Curiel network of Paris. At the time of his arrest, PL member Marco Donat Cattin was in the company of Grunbaum.

The report finally lists the front organizations and clandestine groups with which AUTOP ideologue Toni Negri has been associated in France: CINEL, Hyperion, Autonomous Coordination, NAPAP, and the former Center for Socio-Economic Research and Investigations (CRISE).

Although these precedents covered by the intelligence report are by no means negligible, they are not comparable to the systematic rhythm of domestic activity carried out by Italian terrorist formations of the left from 1968 through 1982. To be sure, the BR in particular had repeatedly addressed international issues in their writings and, with the abduction of General Dozier in 1981, had dynamically stepped into the international arena. Yet, the internationalization of Italian terrorism—or its substantive beginning—appears to be a more recent development.

In discussing the Italian pacifist movement, it was already noted that the themes addressed violently and nonviolently by the BR, AUTOP, the anarchists, and other extremist formations are clearly international in their anti-NATO and anti-Western connotations. Moreover, all major documents—pamphlets and communiques—issued by the BR since 1983 make at least some reference to international matters even when they essentially deal with domestic affairs. A macroscopic example of this tendency is provided by Pamphlet No. 19 of March 1984, which covers in 60 pages Italian economic, social, and political affairs, but ends with the exhortation:

> Against warmongering foreign policy: Withdrawal of all troops from the Middle East! No to the missiles in Comiso!

[47] Supra note 44, p. 387.

> Italy out of NATO! Get rid of the Craxi [Italy's Prime Minister] government, servant of the bosses and of imperialism!

In Pamphlet No. 20 of the following year, the BR attribute to themselves a leading role in the European "anti-imperialist struggle."[48]

Likewise, international references appear in all three communiques issued by the BR as responsibility claims after the attacks on Giugni, Hunt, and Tarantelli. But the action against Hunt is the most indicative of the internationalization process at various levels. The victim was substantially unrelated to either Italy or NATO. Moreover, the communique addressed a broad range of foreign issues, including Western "imperialism" in the Third World. Finally, the murder was accompanied by a second responsibility claim in Beirut, issuing from the Lebanese Armed Revolutionary Brigades. Whether a "solidarity" claim or a "principal's" claim, it reflects unity of intent.

The absence of Italian participation in so-called "Euroterrorist" actions during the wave of ostensibly coordinated anti-NATO and anti-Western attacks recorded in key West European countries from October 1984 to March 1985[49] is not per se an indication that international objectives have been discarded by the Italian terrorist left. According to qualified observers, BR attention was largely taken up during that period by an internal debate encompassing the militarist/movementist issue and other policy matters.[50] Other considerations are equally pertinent. In their responsibility claims for "Euroterrorist" attacks, the Belgian Communist Combat Cells (CCC) quoted BR writings. One day before the opening of the trial of members of the BR Veneto "column" that started on March 6, 1985, a significant "delivery" took place in Venice: the orginal French-German text and its Italian translation of the Direct Action and Red Army Faction joint communique of January 15, 1985, a passage of which reads: "Today it is possible and even necessary to set up the International Proletarian Warfare Organization and its politico-military arm: West European Guerrilla." Also in March 1985, BR Pamphlet No. 20 extolled the "anti-imperialist struggle" in the terms noted above. And, not least, already in late 1984, Italian terrorists of the left had joined their Basque, Corsican, Irish, German, French, and Belgian comrades in the Basque country to study "a unified offensive against imperialism and militarism."[51]

In the context of the internationalization of the Italian terrorist phenomenon, the French connection is particularly meaningful as it reflects not only subversive/terrorist international solidarity, but also the pooling of forces and/or resources. Involved in the French

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[48] As mentioned earlier on in the text, pamphlet No. 20 of March 1985 is still subject to investigative secrecy; however, at least some passages have been acquired by the press. See, for example, *La Repubblica*, Mar. 28, 1985, p. 4 (Rome).

[49] For an overview and analysis of these incidents, see Vittorfranco S. Pisano, "Euroterrorism and NATO," *Update Report*, Clandestine Tactics and Technology, International Association of Chiefs of Police, Gaithersburg, Md., vol. 11, 1985.

[50] See interview with Investigating Judge Rosario Priore in *L'Espresso*, Feb. 17, 1985, pp. 8-9 (Rome).

[51] *Panorama*, Feb. 10, 1985, p. 65 (Milan).

connection are the Organized Comrades for Proletarian Liberation (COLP), PL-related elements, the BR, and AUTOP.

COLP/PL

Initial evidence of operational cooperation between Direct Action (Action Directe—AD) and PL emerged in March of 1980 when PL members Enrico Bianco, Oriana Marchionni, Franco Pinna, and Pierluigi Amadori were arrested near Toulon on charges of participation in an armed "proletarian expropriation" organized by AD. Joint operations of this nature grew in intensity since 1983. Gloria Argano of COLP has been indicted for her role in the murder of two policemen in Paris on May 31, 1983, during their shoot-out with AD militants. Argano is further suspected of involvement in two robberies perpetrated by AD in Paris in July of the same year. Also involved in one of these two robberies was COLP member Vincenzo Spanò. On October 14, 1983, still another COLP member, Ciro Rizzato, was killed in Paris during a robbery conducted under the AD banner. AD subsequently named one of its "combat units" after Rizzato. On February 22, 1984, Spanò was arrested in a Parisan AD hideout, where the police seized 22 firearms and 32 kilograms of explosives.

BR

A document confiscated in a BR safe house in January 1982 refers for the first time to an "external column, whose task is to protect fugitives and recruit new militants." The document further states that successful counterterrorist operations in Italy paradoxically reinforced the "external column." This information was provided by a Roman investigating judge in response to a question regarding the French connection. The magistrate also pointed out that red brigadist Giorgio Frau, who kept a list of public figures, including BR victim Ezio Tarantelli, was arrested in Paris.[52] According to another Roman investigating judge, a BR "liaison office" operated in Paris since the days of Moretti's initial travels to France in 1978 through Senzani's capture in 1982. In order of succession, the BR representatives to Paris were Moretti, Anna Laura Braghetti, Riccardo Dura, Maurizio Jannelli, Alvaro Lojacono, Fulvia Miglietta, and Senzani.[53]

On November 7, 1983, French journalist Jean-Louis Baudet was arrested in Paris and subsequently convicted in July 1984 for possession of weapons and classified documents. According to repentant red brigadists, Baudet had furnished to Senzani several weapons, including rocket launchers, and had traveled to Rome to provide instruction on their employment. His girl friend, Catherine Legagneur, told the Italian investigating judges that she had also supplied to Palestinians and to BR members false documents. On his part, Baudet claims that he was working for the French Government and his task was to keep leftist groups from carrying out terrorist attacks against the Socialist Government headed by Mitterrand.

[52] Interview with Judge Ferdinando Imposimato in *Panorama*, Apr. 7, 1985, pp. 36-38 (Milan).
[53] Supra note 50.

Several BR documents seized by the Italian police in 1984 attest to continued BR planning in France and even to internal organizational debates held in that country. Moreover, the apprehension of Barbara Balzarani, an "historic" leader of the BR convicted of several murders, and her clean-police-record companion Gianni Pelosi performed by the Carabinieri in Ostia (Rome) on June 19, 1985, has reportedly been made possible by investigations conducted in France. This counterterrorist development, which is obviously most recent, may possibly shed additional light on the French connection. What appears to be certain at this point is that the BR fugitives whose traces are lost in France resurface in Italy for operational purposes.

AUTOP

It was reported in the *Introduction* that 117 identified terrorist fugitives are located in France. These are official statistics. Press accounts, on the other hand, concur on a larger figure: 200. Presumably, a notable percentage of these are "autonomists" who committed terrorism-related crimes. Major AUTOP members enjoying asylum in Paris are Toni Negri, Oreste Scalzone, and Gian Franco Pacino, all three convicted in Italy to prison sentences ranging from 28 to 36 years. Negri and Scalzone in particular enjoy access to a number of academic and cultural circles in which and through which they continue to propagandize views that are, to say the least, unconventional.

In the context of international links, some observations are in order with respect to the pacifist movement as well. "The Cobweb," one of the above-discussed pacifist camps set up in Comiso, is made up exclusively of women and the majority of them is of English or German nationality. Expulsions from Italy of foreigners responsible for blocking the entrances of the missile site and conducting clandestine penetrations therein have been frequent. More disquietingly, a number of German pacifist militants in the area was found in possession of suspiciously recent visas to East European countries.

Worst yet, Libyan leader Qaddafi has made it clear, through his Sicilian agent of influence Michele Papa, that funding is available for pacifist demonstrations worth patronizing. The pro-Western mayor of Comiso, an unwilling recipient of the Libyan offer, angrily disclosed this practice in the course of an interview.[54] Other sources report that Libyan funding has been channelled to select pacifist groups through certain firms that do business with Libya. Significantly, Giacomo Cagnes, head of the above-referred Unitary Committee for Peace and Disarmament of Comiso (CUDIP), has alleged that the Comiso-based missiles are pointed at Libya, the Middle East, and the Persian Gulf. Cagnes proposes closer relations with the "liberation movements" of the entire southern Mediterranean as "the new central commitment of Italian pacifism.[55]

Rather limited, by comparison, are the international links and objectives of the rightist terrorist formations. As in the past, Ital-

[54] See interview with Salvatore Catalano in *Europeo*, Oct. 15, 1983, p. 21 (Milan).
[55] Supra note 37, p. 8.

ian rightist extremists enjoy safehaven and other points of contact in Latin America, France, and England.

Transitional Terrorism in Italy

Several transnational terrorist actions recorded during this period reflect that Italian territory continues to serve as an alternate battle ground for foreign feuds. Terrorist attacks of this nature were conducted primarily against citizens or property of Libya, Jordan, Syria, and the United Arab Emirates. While these actions are generally related to the internal affairs of those countries, to regional disputes involving those countries, or to the Palestinian issue, still other transnational terrorist operations—consummated or planned—are an unequivocable indication of anti-Western designs. Even more disconcerting from an Italian security standpoint are the repeated threats made against Italy by Third World elements, whose record includes political violence in their countries and abroad.

LIBYA

As opposed to the pre-1983 timeframe, which was characterized by terrorist actions against expatriates who refused to return to Libya or to cooperate with Qaddafi's regime, analogous actions have since been carried out against representatives of the Libyan Government in Rome. On January 21, 1984, shortly after 3 p.m., Libyan Ambassador Ammar El Taggazy was attacked from behind by two masked men as he approached the garage of the condominium in which he resided. He was beaten and fired upon with two pistols. The following day a caller telephoned the London office of Associated Press to claim responsibility on behalf of the Libyan opposition group Al Forkan (Vulcan). The Ambassador did not recover and died in a Rome hospital on February 10, 1984. Almost 1 year later, in the early morning hours of January 13, 1985, Libyan press attache Magkjun Farg was murdered near his residence by a lone gunman, who discarded his silencer-equipped Walther 7.65 mm semiautomatic pistol. Before dying, Farg returned the assailant's fire with a 38 cal. revolver and wounded him, presumably, slightly. Al Forkan once again claimed responsibility in accordance with the previous modalities.

Conversely, two more terrorist attacks perpetrated during the same period have been attributed to emissaries of the Libyan regime. On September 20, 1984, Libyan political refugee Mohammed Khomsi was found strangled in a Rome hotel. A telephone responsibility claim received by the news agency ANSA from the Organization of Mauritanian Nationalists (ONAM) is not deemed credible by the investigators. On March 1, 1985, Mordechai Fadlum, a Libyan Jew and expatriate, was murdered in his Rome jewelry store shortly before closing time with a silencer-equipped Beretta 7.65 mm semiautomatic pistol, which the attacker discarded before fleeing. Although the store safe was open, nothing was removed. Witnesses described the last store visitor as Arabic-looking and provided an identikit.

JORDAN

On October 26, 1983, at approximately 1:40 p.m., as Jordanian Ambassador Taysir Alaedin Toukan was being driven by his chauffeur from the Embassy to his Rome residence, a gunman posted behind a billboard took advantage of the rush-hour traffic that temporarily halted the Ambassador's car and opened fire with a Polish WZ-63 submachinegun. Both the Ambassador and his driver were seriously wounded. The gunman was backed up by two accomplices who fired upon the Ambassador's body guard after they dismounted from the escort vehicle to chase the attacker. The assault weapon was abandoned in a nearby street. Among less credible responsibility claims, one was issued by the Abu Nidal group, a renegade faction of Al Fatah.

Responsibility for another anti-Jordanian attack in Rome was claimed by Black September on March 22, 1985. A three-man commando group broke into the local office of the Jordanian Airlines, hurled three grenades, wounded two employees, and fled. Two weeks later, on April 3, 1985, at approximately 9:40 a.m., a Black September militant aimed a disposable anti-tank weapon against the offices of the Jordanian Embassy in Rome from the underlying square (Piazza Verdi). He missed the intended target by one floor and hit the apartment below. Fortunately, no injuries resulted from this incident. The terrorist, Palestinian Ahamed Mimour, was captured by a courageous doorman. Mimour was also carrying a pistol, but it jammed when tried to shoot the doorman, Illuminato Tavella. In addition to Mimour's admission, there was also a telephone responsibility claim from a Black September spokesman.

SYRIA

Serious damage was caused to a Syrian Airlines Boeing 727 on July 13, 1983, when an incendiary device was smuggled aboard by unknown terrorists. The fire took place before takeoff and consequently there were no injuries. Only a few days thereafter, another device of the same type was found in a toilet of Rome's International Airport "Leonardo Da Vinci." Investigators believe it was meant for the same plane. In the evening of April 1, 1985, a bomb intended for the Rome office of the Syrian Airlines slightly wounded three bystanders on the other side of the street.

UNITED ARAB EMIRATES

The Arab Revolutionary Brigades, a group believed close to Abu Nidal, claimed responsibility in Paris for the attack against Mohamed Al Sowaidi, Vice Consul of the United Arab Emirates in Rome. This action was perpetrated by Jordanian national Mohammad Othman on October 26, 1984. He seriously wounded the diplomat and killed his Iranian girl friend Noushine Montassari, a student at the University of Rome. The gunman took advantage of a traffic light that caused the vehicle they were riding in to stop. He was immediately apprehended. The responsibility claim warned the "United Arab Emirates and other states of the Gulf against pursuing their policy linked to the Americans and to the Zionist movement and hostile to Arabs and Palestinians."

OTHER TRANSNATIONAL ACTIVITY

During the same period various individuals from Third World countries traveling on false passports and in possession of explosives were arrested at Rome's International Airport. These extremists were mostly traveling on Italian territory to reach other destinations. Moreover, press accounts report that a network of politico-religious fanatics has been organized in Rome under the Iranian Ayatollah Hadi Khosraw-Shahi to carry out anti-Western subversive and possibly terrorist activity. This network reportedly includes various foreign nationals, to wit, Pakistanis, Tunisians, and Turks,[56] and appears to be modeled after the ones already operating in France.[57] Furthermore, an attack of still dubious paternity occurred in Rome on December 14, 1984. Two persons on a scooter approached PLO representative Ismail Darwish, fired several pistol shots, and left him dead on the sidewalk.

A potentially devasting attack, reminiscent of the bloodiest terrorist actions perpetrated in the Middle East, was foiled by Swiss-Italian cooperation in late 1984. The intended target was the U.S. Embassy in Rome. On November 18, the Swiss police arrested Lebanese national Hussein Atat, who had arrived at the Zurich airport from Beirut and was waiting for a connecting flight to Rome. Atat was in possession of explosives. The Swiss police authorities alerted their Italian counterparts, who, in turn, apprehended in the Roman beach resort of Ladispoli seven Lebanese nationals enrolled as students either at the University of Rome or in other professional institutes. All seven were in contact with the Palestinian arrested in Switzerland. Two were subsequently released, while the other five—Mahmoud Gebara, Mahmoud Hani Bayoun, Fahs Mohamed Neemtalla, Hussein Abdul Hassan El Sefaqi, and Melhem Khadr Issa—have been charged with the crimes of armed band and attempted massacre.

In the Ladispoli residence of the arrestees the Italian police found a map of the U.S. Embassy in Rome with compromising annotations in the margins. This led the investigators and the state attorney to the conclusion that an explosive-truck attack against the U.S. Embassy was in the offing. The arrestees rejected all charges, but admitted to be members of Islamic Jihad. At this writing, a trial date has not yet been set. Procedurally, it is up to the investigating judge to determine whether trial is warranted on the basis of the findings of the state attorney.

It might be noted that the aforementioned Atat, believed to be a courier of explosives, was released by the Swiss authorities in close concomitance with the release of Swiss diplomat Erich Wehrli, who had been abducted in Beirut. This development forecloses the possibility of Atat's extradition to Italy in connection with the proceedings against the five Lebanese charged in Rome. Because of the potentially damaging consequences at the judicial level, the Italian Minister of Justice has expressed some bitterness vis-a-vis the Swiss decision.[58]

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[56] See *Corriere della Sera,* Sept. 1, 1984, p. 7 (Milan).

[57] See Vittorfranco S. Pisano, *France as a Setting for Domestic and International Terrorism,* International Association of Chiefs of Police, Gaithersburg, Md., 1985.

[58] *Corriere della Sera,* supra note 2.

In the early months of 1985, threats were leveled against Italy by Libya's Qaddafi, on one hand, and the Lebanese Armed Revolutionary Faction (LARF) and Islamic Jihad, on the other. In March, Libyan news agency JANA quoted Qaddafi to the effect that he would support Italian terrorist groups if Italy backs anti-Libyan regime elements and does not release "hundreds of Libyans in prison," a highly inflated reference to the few Libyans arrested in Italy because of their attacks on Libyan expatriates. From February through May, threats of direct attacks against Italian targets were made by the LARF and Islamic Jihad in a fruitless effort to obtain the release of their members arrested in Italy on account of their involvement in transnational terrorist activity.

For the sake of completeness, a few comments are in order limitedly to the judicial and propaganda developments regarding the abortive assassination attempt on the life of Pope John Paul II prepetrated by Turkish national Mehmet Ali Agca in St. Peter's Square on May 13, 1981. In July of the same year, Agca was convicted by the Court of Assizes of Rome, pursuant to the longstanding 1929 agreements between Italy and the state of the Vatican City that vest the Italian courts with jurisdiction over crimes committed on Vatican territory. Supplementary investigations subsequent to Agca's conviction led to a new trial for conspiracy, which began on May 27, 1985, and is consequentially still in progress. In addition to Agca, the defendants are Bulgarian nationals Sergei Antonov, Todor Ayvazov, and Jelio Vassilev and Turkish nationals Bekir Celenk, Musa Serdar Celebi, Omer Bagci, and Oral Celenk.

These indictments were made possible by Agca's testimony months after his initial conviction. Although there are some contradictions and inaccuracies in Agca's statements, the Italian judicial authorities, after having investigated all aspects of Agca's belated revelations, concluded that there was sufficient evidence to bring the case to trial. During the hearings held to date, Agca's courtroom behavior has repeatedly been bizarre, for example, he proclaimed himself to be Jesus Christ. This could ultimately impeach his credibility before the court. However, after a lot of "rhetoric," he did confirm in court the "Bulgarian connection." Moreover, a formal psychiatric expertise performed in Turkey and expert opinion offered in Italy lead one to believe that he is not insane. Under the circumstances, Agca's odd behavior could be an attempt to communicate and/or bargain with former principals or associates. Besides, there is no certainty that Agca told the prosecution all he knows.

The trial has been preceded and is being accompanied by various forms of propaganda against the findings of the prosecution as they relate to the "Bulgarian connection." Books and press accounts allege or hypothesize fabrication of evidence and coaching of Mehmet Ali Agca by Western intelligence services, particularly those of Italy and the United States of America.[59] On his part, An-

[59] Two significant examples out of many: (1) In May 1985, Italian Communist publisher Napoleone put out a book titled "La Pista" (The Trail). Its author, French attorney Christian Roulette, argues that American intelligence has built up the accusations against Bulgaria. (2) An article in the May 19, 1985, issue of the Roman weekly "L'Espresso" insinuates that Agca, who alleges to have visited Antonov's Rome apartment for conspiratorial purposes, actually de-

Continued

tonov's defense counsel, Giuseppe Consolo, made an appeal on NBC television to the American public regarding the alleged innocence of his client.[60]

Recent developments also include ostensible efforts to improve strained Italian-Bulgarian relations. In December of 1982, following the arrest of Sergei Antonov, one of the above-listed defendants, diplomatic relations between Rome and Sofia were temporarily downgraded. Only in the spring of 1984 were they restored to the full ambassadorial level. Moreover, the Italian Government seems to have overlooked that the new Bulgarian Ambassador to Rome, Raiko Marinov Nikolov, had been expelled from France earlier on in his career and had subsequently been denied reentry in that NATO country.[61] Likewise Bulgarian air and naval attaché Ivan Jueorguiev Kotchovski, who should have been expelled from Italy on espionage grounds in November of 1983, was apparently allowed to leave the country because of the "normal expiration of his posting" as claimed by the Bulgarian Embassy. On her part, Bulgaria released from prison and repatriated to Italy in 1984 Gabriella Trevisin and Paolo Farsetti. The couple had been arrested and convicted in Bulgaria on questionable espionage charges in 1982, just as the ramifications of the "Bulgarian connection" were beginning to emerge.

This apparent political accommodation has not affected to date the Italian judicial process, much to the credit of the Italian judiciary. Whatever the outcome of the trial, it should be remembered that said trial is governed by the rules of criminal procedure and evidence—democratic rules not easily applicable to the murky sphere of international clandestine operations.

Countermeasures and Concluding Observations

Legislative enactments of this period are not directly related to terrorism. However, Law No. 398 of July 28, 1984, on the reduction of pretrial confinement and provisional release [62] could have restored to freedom, as early as February 2, 1985, "1300 suspected terrorists, mafiosi, murderers, kidnappers, and drug traffickers." [63] Wisely, in January 1985, the Italian Parliament extended to November 30 of the same year pretrial confinement for individuals charged with the commission of intrinsically violent crimes.

Official statistics reflect that counterterrorist operations have continued to bear fruits. In 1983, the State Police (Polizia di Stato) arrested 132 terrorists/extremists of the left and 111 of the right and seized 9 safe houses of the terrorist left. During the same year, the Carabinieri arrested 140 terrorists/extremists of the left and 33 of the right and seized 8 safe houses of the terrorist left and 1 of the terrorist right. In 1984, the State Police arrested 50 terrorists/

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scribed it on the basis of another apartment in the same building: that of Belgian priest Andre Felix Morlion. According to the article, Father Morlion "was the shadow informer of the CIA with respect to Vatican affairs and is connected to U.S. rightist circles interested in Italian matters." (P. 18.)

[60] In commenting on NBC's interview of June 13, 1985, with Consolo, an Italian news agency defined "incomprehensible" Consolo's "appeal to the American people." See *Agenzia Italiana Stampa—AIS*, No. 180, June 29, 1985, p. 2 (Rome).

[61] See, for example, *L'Espresso*, May 13, 1984, p. 11 (Rome).

[62] *Gazzetta Ufficiale della Repubblica Italiana*, No. 210, Aug. 1, 1984, Rome, pp. 6350-6355.

[63] *La Repubblica*, Jan. 18, 1985, p. 1 (Rome).

extremists of the left and 37 of the right and seized 1 safe house of the terrorist left. On their part, the Carabinieri arrested 87 terrorists/extremists of the left and 14 of the right and seized 9 safe houses of the terrorist left and 1 of the terrorist right. Official statistics for 1985—up to May 20—reflect that the carabinieri arrested 33 terrorists/extremists of the left and 3 of the right and seized 2 safe houses of the terrorist left. Statistics regarding 1985 State Police counterterrorist operations are not available at this writing.

Conversely, these statistics constitute an indicator of the residual numerical strength of the politically violent milieu at a time when the overall domestic terrorist menace in Italy has subsided.

Unchanged are the methods developed by the police forces in combating terrorism prior to 1983.[64] However, the tightening of compartmentalization, particularly in the structure of the Red Brigades (BR), has reduced the potential contribution of new terrorist recruits who did or might repent after capture and has necessitated greater reliance upon documents confiscated in captured safe houses and propaganda material openly issued by the pertinent terrorist formations.

With respect to past counterterrorist operations, two developments at the judicial level deserve attention. After the successful liberation of General Dozier from a BR "people's prison" in January 1982 by members of the State Police Central Operative Nucleus for Security (NOCS), five policemen, including officials and NOCS members, were indicted on charges of torture allegedly committed on red brigadists to force them to reveal information. One of the five, Salvatore Genova, was not brought to trial, since in the interim he had been elected to Parliament. On July 15, 1983, the Tribunal of Padoa held that mistreatment rather than torture had taken place. An appellate decision of March 20, 1984, reduced the essentially symbolic suspended sentence inflicted by the lower court.[65] On April 30, 1984, the Court of Assizes of Pavia inflicted another suspended sentence on police official Ettore Filippi, who had "covered" crimes against property perpetrated by a police-controlled political extremist so that he could acquire credibility with the BR. In fact, this infiltrator had led to the capture of high-ranking red brigadists Mario Moretti and Enrico Fenzi in 1981. Both court decisions have caused some bitterness in counterterrorist circles, but they reflect, nevertheless, the application of the rule of law.

Beyond the contents of the above-summarized CESIS report, which addresses international linkages, little progress has officially been made in acquiring details on backstage elements of the Italian terrorist phenomenon. Rather disappointing in this respect is the outcome of the appellate trial regarding the Moro affair. The trial ended on March 14, 1985. Despite the revelations of Valerio Morucci, a key disassociated red brigadist and a participant in the Moro abduction, it was not even possible to establish where the

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[64] See supra note 1, pp. 51–56.

[65] Notwithstanding these court decisions, there are those who still attribute to the police torture practices. See Giorgio Bocca, *Noi Terroristi,* Garzanti, Milano, 1985, pp. 279–283. The book includes several interviews with the terrorists themselves relative to the period 1968–1982. A direct account of the Dozier affair and its aftermath is provided by Salvatore ("Rino") Genova. See Rino Genova, *Missione Antiterrorismo,* Sugarco, Milano, 1985, pp. 97–190.

late Christian Democratic party president was hidden during his captivity.

A noteworthy departure from past practices is the attitude displayed by the executive branch of government on the occasion of the December 23, 1984, train bombing in the Apennines gallery near San Benedetto Val di Sambro that killed 15 passengers and wounded 131. In the past, indiscriminate or "blind" attacks of this nature had immediately been blamed on the extreme right in the belief, assumption, or "political" determination that this modus operandi can only be rightist. In reporting to the Parliament, on December 27, 1985, Prime Minister Bettino Craxi stated that "the trials to be investigated . . . are multiple" and warned against the dangers of "one-way" investigations.[66]

On the other hand, this despicable massacre brought once again to the forum a favorite allegation of the Communist left and its fellow travelers: the involvement of the Italian intelligence services in antidemocratic plots and their "subordination" to the United States, directly or through NATO. This time the proponent of said thesis was Socialist Member of Parliament Rino Formica.[67] Interestingly enough, Formica cited a book authored by one Giuseppe De Lutiis, published by Editori Riuniti, the publishing house of the Italian Communist Party (PCI), and titled "Storia dei Servizi Segreti in Italia" (History of the Secret Services in Italy).[68] The central theme of the book is that subversive armed bands have consistently constituted a parallel structure of the Italian intelligence services, whose operations are conditioned by agreements with the United States. The book, which is characterized by the repeated and systematic use of the words "perhaps" and "probably" cites almost exclusively Communist or left-oriented sources. Both the Prime Minister and the Defense Minister categorically denied such "subordination," past or present.[69]

Other polemics resulted from the unprecedented pardon of a convicted terrorist, Flora Pirri Ardizzone, in late May of 1985, after she had served 7 years and 2 months in prison. There are those who fear that it constitutes a prelude toward a generalized amnesty at a time when new legislation is being considered to reinsert into society disassociated terrorists. The societal recovery of terrorists is a sensitive problem for which a suitable solution could more readily be found at this time in consideration of the reduced momentum of the Italian terrorist onslaught.

Though not specifically related to the terrorist problem, Law No. 354 of July 26, 1975, which constitutes the basis for the reform of the Italian prison system, calls for the rehabilitation of prisoners as well as former prisoners. Contemplated measures include the identification of specific rehabilitation needs of individual prisoners and rehabilitation programs encompassing education, work, religion, cultural activities, recreation, sports, family relations, and appropriate out-of-prison contacts. This law also provides for the es-

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[66] Senato della Repubblica, IX Legislatura, 219a Seduta Pubblica, *Resoconto Sommario*, Gioverdi 27 Dicembre 1984, Roma, p. 8.

[67] See, in particular, interview with *La Repubblica*, Dec. 29, 1984, p. 3 (Roma).

[68] Giuseppe De Lutiis, *Storia dei Servizi Segreti in Italia*, Editori Reuniti, Roma, 1984.

[69] See Atti Parlamentari, Camera dei Deputati, IX Legislatura, *Discussioni*, Seduta del 29 Gennaio 1985, Roma, pp. 11-29 and *Corriere della Sera*, Dec. 21, 1984, p. 1 (Milan).

tablishment of social service centers connected to the offices of the judiciary having a supervisory role over prison institutions. Likewise, it calls for the utilization of qualified volunteers interested in the rehabilitation of social deviants.

The scope of the law includes social service assistance to release prisoners during the immediate postimprisonment stage. According to the law, this can also be accomplished with the participation of specialized public and private entities. Of the private ones, many are religious (nearly always Catholic) institutions. Another important provision of the law requires that former prisoners subject to the security measure of "freedom under surveillance" be entrusted to the care of the social service in addition to the obligation of complying with police controls.

Regrettably, the implementation of Law No. 354 of 1975 has been slow and generally unsystematic. Nevertheless, it could provide a working frame of reference not only for the rehabilitation of common criminals, but also of former terrorists.

At present, the institution that appears to have had the greatest success in "bridging the gap" between Italian repentant or disassociated terrorists and society is the Catholic Church, as evidenced by the frequent requests of former terrorists for religious services on the occasion of their marriage and the birth of their children, on one hand, and by instances of whole arsenals being turned over by former terrorists to the ecclesiastical authorities, on the other. In this connection it is important to emphasize that the Catholic Church has maintained a stable presence both in the prisons and in the organizations whose aim is the rehabilitation of social deviants. Significantly, former terrorists have stressed the attractiveness of the Church's social ministry rather than her underlying religious mission.

In the long term, it may also be possible to hypothesize a contributory role in the rehabilitation of terrorists by police officials responsible for supervising former terrorist prisoners subject to "freedom under surveillance," provided that specific training be made available if this additional task is assigned. Moreover, political organizations particularly active in social and humanitarian issues could in certain cases serve as a secondary conduit for the rehabilitation of former terrorists convicts or even terrorists sympathizers who have never been indicted. Nevertheless, this sort of political "cooption" is open to dangers.

The political defeat of Italian terrorism does not foreclose the recurrence of terrorist crimes. In fact, the period January 1983–June 1985 has been marked by terrorists actions perpetrated after the revolutionary battle against democratic institutions had already been lost. Violence-oriented subversive forces still in the field—and their new recruits—do continue to display commitment to their cause.

On the purely domestic side of the spectrum, the most worrisome scenario entails a potential accommodation between the militarist and movementist factions of the BR. Parallel operations by these two groups would ensure, in the long term, the continuation of selective, even if occasional, terrorist attacks, accompanied by active and passive recruitment of various strata of Italian society in concomitance with the exploitation of socioeconomic tensions and/or

ideological initiatives. Moreover, the leftist terrorist ranks could draw at least occasional reinforcement from rightist extremist circles, if the trends detected by the intelligence and security services prove to be viable.

On the international side of the spectrum, it is now clear that the terrorist left in particular is combining domestic goals with international ones, as manifested by its writings and actions. This development could enhance linkages with transnational formations. The Italian Prime Minister, as recently as January 29, 1985, stated that during the last 12 months the major danger signs come from "international terrorism" to which Italy ". . . is particularly exposed because of her geographical position and her extremely liberal legislation and policy . . . regarding access and sojourn in the territory of the Republic."[70]

While revolutionary fervor and obstinacy cannot be easily stamped out, equally evident is the fact that after nearly 20 years of counterterrorist experience, the Italian security forces and the judiciary have acquired the necessary expertise to cope with changing situations.

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[70] Atti Parlamentari, id., p. 14.

S. HRG. 99-211

TO MODIFY THE EXCLUSIONARY RULE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 237

A BILL TO AMEND TITLE 18 TO LIMIT THE APPLICATION OF THE EXCLUSIONARY RULE

OCTOBER 2, 1985

Serial No. J-99-57

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TO MODIFY THE EXCLUSIONARY RULE

WEDNESDAY, OCTOBER 2, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Mitch McConnell presiding.

Present: Senators Grassley, Metzenbaum, DeConcini, Biden, Specter, and Simon.

Staff present: Victor Maddox, majority counsel; William S. Miller, majority counsel; Charles Reid, minority counsel.

OPENING STATEMENT OF SENATOR MITCH McCONNELL

Senator MCCONNELL [presiding]. The hearing will come to order.

Good morning, ladies and gentlemen. Chairman Thurmond has asked me to chair today's hearing on S. 237, a bill that would limit the application of the exclusionary rule. There have been other hearings on this issue, so we already have a fairly well developed record on this matter.

Not having been a Member of the Senate when those prior hearings occurred, I am pleased to be here today to accept the testimony of our distinguished witnesses. As all of you know, the exclusionary rule has been the subject of a great deal of controversy since it was announced by the Supreme Court early in this century.

No one can argue with the salutary nature of the rule. The right to be free from unlawful search and seizure is a right that is, in many senses, fundamental to the American constitutional approach to government.

Heavy-handed police conduct is an all too common fact of life in so many parts of the world that we rightly approach with caution any effort to modify the restraints on such conduct that have been developed here.

Yet caution ought not to lead to paralysis. Too many times, we have seen evidence declared "fruit of the poisonous tree," and rejected, with the criminal set free, despite the best of faith on the part of our law enforcement officials. Some of the most sensational cases are well known, but more troublesome are the cases that are known only in the compilations of statistics.

These are the garden variety criminal cases in which the criminals are turned loose, and the hands of our law enforcement agencies tied because of unrealistic restrictions on the use of evidence.

I believe that S. 237 is a reasonable modification to the exclusionary rule. It declares in simple and sensible terms, that evidence

that is otherwise admissible shall be admitted if the police obtained it in good faith. With this change, the object of the rule, police misconduct, would once again become the target of the rule.

[Text of S. 237 follows:]

II

99TH CONGRESS
1ST SESSION

S. 237

To amend title 18 to limit the application of the exclusionary rule.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 21), 1985

Mr. THURMOND (for himself, Mr. LAXALT, Mr. HATCH, Mr. ABDNOR, Mr. CHILES, Mr. DOMENICI, Mr. LONG, Mr. ZORNISKY, Mr. DENTON, Mr. JOHNSTON, Mr. TRIBLE, Mr. D'AMATO, Mr. EAST, Mr. HELMS, and Mr. BOREN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18 to limit the application of the exclusionary rule.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Exclusionary Rule Limitation Act of 1985".

SEC. 2. (a) Chapter 223 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3505. Limitation of the fourth amendment exclusionary rule

"Except as specifically provided by statute, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be exclused in a proceeding in a court of the United States if the search or seizure was undertaken in a reasonable, good faith belief that it was in conformity with the fourth amendment to the Constitution of the United States. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable good faith belief, unless the warrant was obtained through intentional and material misrepresentation.".

(b) The table of sections of such chapter is amended by adding at the end thereof the following item:

"3505. Limitation of the fourth amendment exclusionary rule.".

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Senator MCCONNELL. Senator Grassley is here, and I would like to call on him to see if he would be interested in making an opening statement. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I do not have an opening statement because I think statements I have made on this subject before speak for themselves, and we thought that we had the hearing process on this legislation over. I hope that this hearing that we have now will relieve any misapprehensions people have over whether or not there has been adequate information gotten in, and consider what that record is and then move to consideration of the bill which is on the agenda. I think that this is a very important piece of legislation, long overdue, and that we need to get on with some sort of a reasonable compromise that everybody can accept.

Senator MCCONNELL. Thank you, Senator Grassley. Senator Denton, from Alabama, a distinguished member of our committee is chairing the Subcommittee on Security and Terrorism this morning, and as a result of that will be unable to attend this hearing.

He has asked that I place in the record at this point an opening statement from him. Without objection, that will appear at this point.

[The statements of Senators Thurmond, Denton, Kennedy, and Grassley follow:]

PREPARED STATEMENT OF CHAIRMAN STROM THURMOND

The hearing today on S. 237 marks the third time in the last five years that the Committee or its Subcommittee on Criminal Law has held hearings to consider exclusionary rule legislation. We held four days of hearings in 1981 and four days in 1983 on S. 829, the Comprehensive Crime Control Act, which included an exclusionary rule bill. The Committee reported that bill, S. 1764, by a vote of 10-7, and the Senate passed the bill in the 98th Congress by a vote of 63-24. S. 237 is identical to S. 1764.

The wisdom of this legislation was confirmed last year by the Supreme Court in the *Leon* and *Sheppard* cases. The hearing today is for the purpose of reviewing S. 237 in light of those cases, as well as to hear from major proponents and opponents of the legislation. S. 237 would codify a federal exclusionary rule, thus recognizing the appropriate authority of Congress to make this important legal policy decision.

I wish to note that the *Leon* and *Sheppard* cases involved search warrants that were ultimately ruled to be invalid. The Court held that the exclusionary rule should not be applied to bar the use of evidence that was obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate, even though the warrant proves to be invalid.

S. 237 applies also to warrantless searches, but it does not undercut any Fourth Amendment guarantees. As I read the bill it is entirely consistent with the rule in the *Leon* and *Sheppard* cases. In fact, S. 237 may be even more stringent than the *Leon* rule because it requires both a subjective good faith belief by the officer and an objectively reasonable belief. The *Leon* rule appears to require only the latter. S. 237 in no way affects the Court's ruling on when search warrants are required. Warrantless search situations will still be the exception, not the norm. S. 237 simply states that in all searches in which the officer acts in an objectively reasonable good faith belief that his actions conform to the Fourth Amendment, the evidence should not be excluded on Fourth Amendment grounds.

I believe that this hearing will again demonstrate the need for exclusionary rule legislation and the soundness of the approach we have taken. I look forward to hearing from the fine witnesses today.

PREPARED STATEMENT OF SENATOR JEREMIAH DENTON

Mr. Chairman, I join in strong support of S. 237, a bill to modify the application of the Exclusionary Rule in Federal courts. I commend you for your leadership in introducing this necessary bill.

The bill would amend title 18 of the United States Code to allow otherwise admissible evidence to be used in Federal court proceedings, even if it was obtained through a violation of the fourth amendment to the Constitution, as long as the search or seizure which produced the evidence was "undertaken in a reasonable, good faith belief that it was in conformity with the Fourth Amendment. . . ."

The Supreme Court first held in the case of *Weeks* v. *United States* (1914) that evidence obtained in violation of the Fourth Amendment was inadmissible in a Federal criminal trial. Since its limited application in *Weeks* to exclude simple evidence of a crime, the exclusionary rule has been expanded to exclude contraband and the actual tools and instrumentalities of a crime. It has been further expanded to exclude evidence that was derived from other illegally seized evidence. Since the exclusionary rule is a judicially mandated rather than a constitutionally required response to fourth amendment violations, its reform through the legislative process is appropriate.

The primary, if not the sole, rationale for the application of the exclusionary rule is to deter fourth amendment violations by law enforcement personnel. The theory is that the exclusion of illegally seized evidence will deter law enforcement personnel from engaging in negligent or intentional practices that result in fourth amendment violations.

The problem arises when the rule is applied to exclude evidence seized in situations that a reasonably well-trained officer would not or could not have recognized as being in violation of the fourth amendment. The rule therefore loses any deterrent value it may have for more egregious violations of the fourth amendment. It simply results in a windfall for the criminal, who walks away unscathed despite the existence of reliable evidence of guilt.

If one considers the exclusion of evidence a "remedy" for one whose fourth amendment rights have been violated, then the problem is that it only rewards those who are actually guilty of a crime. It provides no recourse for innocent victims of police overaggressiveness, negligence, or intentional misconduct.

Mr. Chairman, in deciding when the exclusionary rule should be applied, the Supreme Court has balanced the deterrent effect of the rule against the cost to society that would result from the distortion of the judicial process caused by depriving the prosecution of reliable, probative evidence of guilt. The bill would make clear the congressional determination that whatever minimal deterrent effect that exclusionary rule may have is outweighed by its cost to society in cases where the evidence to be excluded is the product of a search or seizure undertaken in a reasonable and good faith belief that it was in conformity with the fourth amendment.

In the 1984 case of *United States* v. *Leon*, the Supreme Court upheld the use of evidence seized by officers acting in reasonable reliance on a search warrant, issued by a detached and neutral magistrate, that was later found to be invalid. The Supreme Court recognized in *Leon* that "indiscriminate application of the exclusionary rule—impeding the criminal justice system's truth finding function and allowing some guilty defendants to go free—may well generate disrespect for the law and the administration of justice." The bill introduced today incorporates the ruling of the Supreme Court that the exclusionary rule should be modified to permit the introduction of evidence obtained by officers reasonably relying on a warrant issued by a detached and neutral magistrate. It also permits the use of evidence seized in warrantless searches where the seizing officer was acting in a reasonable and good faith belief that his conduct conformed with the fourth amendment.

The exclusionary rule will still be applied in cases where police conduct is objectively and patently unreasonable or where it is based on a warrant which was acquired through intentional and material misrepresentation. Thus, the effect of the bill is simply to limit the use of the exclusionary rule in those cases in which its cost to society is grossly disproportionate to the minimal deterrent effect it may have on law enforcement officers.

Mr. Chairman, legislation in the area is long overdue. I strongly urge my colleagues to support S. 237, as we did with the identical bill, S. 1764, last year, so that the 99th Congress will effect a needed modification of the exclusionary rule. Thank you, Mr. Chairman.

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

Mr. Chairman, last year the Senate did some excellent work on effective anticrime legislation. It passed a landmark crime package by an overwhelming majority (91-1), containing a complete overhaul of criminal sentencing, bail reform, and

many law enforcement improvements in the area of drug trafficking, criminal forfeiture, and prosecution of violent offenders.

The coalition of Democratic and Republicans, liberals and conservatives, which supported the crime package that was signed into law a year ago demonstrates that we can adopt significant anticrime legislation, without jeopardizing the constitutional rights or the civil liberties of any citizen.

In contrast to this meaningful anitcrime legislation, which I worked on for over a decade, is the bill to curtail the fourth amendment exclusionary rule, S. 237, which is the subject of today's hearings.

In the past I have opposed proposals to eliminate or limit the exclusionary rule because these proposals were not anticrime and they could have infringed constitutional rights and important civil liberties.

In particular, there is no evidence that relaxing the exclusionary rule is a practical step to take in the war against crime.

Studies show that in only between 1 and 2 percent of over thousands of criminal prosecutions examined was evidence excluded as the result of a fourth amendment violation. In less than one-half of 1 percent of the cases analysed in a GAO study was an exclusionary rule problem the primary reason for a prosecutorial decision not to bring a case. Simply put, the so-called reform in this legislaiton will not make any significant difference in reducing crime.

I have even greater reservations about the bill now before this committee.

First, we need to evaluate why congreessional action at this time is appropriate. The Supreme Court decisions in *United States* v. *Leon* and *Massachusetts* v. *Sheppard* created a limited "good faith" exception to the fourth amendment exclusionary rule in warrant cases.

The impact of these July 1984 decisions on police behavior and training practices is currently being studied by the Department of Justice, though the National Institute of Justice. I believe that the data from this study should be available to this committee so that it can evaluate whether any further modification of the exclusionary rule is appropriate.

Second, the Court has not extended the good faith exception recognized in *Leon* and *Sheppard* to any warrantless search situation. The difficult constitutional issues raised by extension of *Leon* to warrantless search suggests that deliberate consideration by the court of further refinement of *Leon* is preferable to sweeping statutory change.

Third, this bill is identical to the bill introduced in the 98th Congress before *Leon*. Its language has not been revised to reflect the requirements for warrent searches recognized by *Leon*.

In sum, exclusionary rule legislation which at best is an empty gesture appears to be particularly ill-conceived at this time.

I would hope today's hearing will address these concerns.

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman, I want to thank you for holding this hearing on S. 237, which modifies the exclusionary rule as it pertains to the fourth amendment.

It is unquestionable that the exclusionary rule is not a personal constitutional right, but one that was court-created as a sanction against a violation of the fourth amendment prohibition of unreasonable search and seizures.

Consequently, the exclusionary rule's purpose was to deter policy misconduct. However, when police have acted mistakenly, but in good faith, excluding seized evidence will not deter similar acts in the future. Exclusion of the evidence can, however, have a monumental adverse effect on the trial, and ultimately society.

Consequently, as Justice White once stated, "any rule. . . that denies the jury access to clearly probative and reliable evidence must bear a heavy burden of justification, and must be carefully limited to the circumstances in which it will pay its way by deterring official lawlessness."

Therefore, it is time to eliminate the abuses of the Rule. The Supreme Court, in its *Leon* decision, took a positive step in this direction by allowing a good faith reliance on a reasonable search warrant. S. 237 conforms with this decision, since searches and seizures would only be allowed if they are undertaken in a reasonable, good faith belief that the fourth amendment is complied with. Consequently, I support S. 237, and look forward to its passage. Thank you Mr. Chairman.

Senator MCCONNELL. I am pleased to welcome our witnesses today, the first of whom is the Honorable Stephen S. Trott, who is Assistant Attorney General for the Criminal Division. Mr. Trott.

STATEMENT OF HON. STEPHEN S. TROTT, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. TROTT. Thank you very much, Mr. Chairman and members of the committee.

I am very pleased to be here today to present the views of the Department of Justice, and of the administration, on legislation to modify the exclusionary rule.

As you know, the rule is a device through which a court excludes otherwise admissible probative evidence solely because it determines that the evidence was obtained improperly. As such, as the Supreme Court itself has remarked, the rule, quote, "deflects the truthfinding process and often frees the guilty."

Such a doctrine, when applied in such a way as to not produce any corresponding benefit for society, is intolerable. It hampers the police in honestly but aggressively seizing evidence of a crime, and worse, it destroys the respect of our citizens for the law and the judicial system.

This administration regards legislation to restrict the application of the exclusionary rule to those cases where there has been real police misconduct—as you pointed out in your opening statement, Mr. Chairman—as one of its most important goals in the criminal justice arena. When I was in law school over 20 years ago, studying the exclusionary rule was an abstract proposition. Parenthetically, of course it has been in effect in the Federal courts since 1914, and in California, since 1955. I believed that the rule was a great thing because I, as did you, Mr. Chairman, believe that the fourth amendment is truly the cornerstone of liberty in this country as we enjoy it.

But I have now been a prosecutor for 20 years, and sadly, I must tell you, that during those 20 years, I probably have, by application of the exclusionary rule, caused hundreds and hundreds and hundreds of cases, felony cases against criminals, not to be filed in our courts because an analysis of the manner in which the police gathered the evidence in those cases indicated that the case, although based on good-faith objective police work, would not survive the patchwork quilt of rules and regulations that defy the imaginations of the best lawyers in the country.

So I now have come, on the basis of 20 years of experience as a prosecutor, to the belief that the good-faith exception is long overdue.

In the last Congress, the Senate passed S. 1764, a bill that provided for a reasonable good-faith exception to the exclusionary rule by a vote of 63 to 24. A few months thereafter, the Supreme Court, in the cases of *Leon* and *Sheppard,* carved out such an exception for cases involving search warrants. The Court squarely held that the fourth amendment exclusionary rule should not be applied so as to bar the use of evidence obtained by law enforcement officers acting in objectively reasonable reliance on a search warrant issued by a

neutral and detached magistrate, even if the warrant is ultimately found to be invalid.

Although the Supreme Court has now effectively laid to rest any real argument that the exclusionary rule is constitutionally required, the House did not see fit to enact S. 1764, or any other bill.

It is therefore necessary that the Senate again act to codify the *Leon* and *Sheppard* holdings, and, even more importantly, to extend their limitation on the rule to search and seizure cases where search warrants are not involved.

Although the argument was sometimes raised in the past that the rule was required by the fourth amendment, the Court made it increasingly clear that this was not the case.

That point was then nailed down by *Leon* and *Sheppard*, the Court indicating that this is "a judicially created remedy designed to protect fourth amendment rights."

Thus, the question, in essence, becomes, really, not one of law but of policy. The Court in *Leon* stated, as it had in a number of other recent cases, that the question of whether evidence should be excluded must be resolved by weighing the costs and benefits of preventing the use in evidence of inherently trustworthy tangible evidence. Therefore, the question we really have to ask is this: Does applying the exclusionary rule to keep out of evidence something that a court believes has been seized in violation of the fourth amendment's prohibition against unreasonable searches and seizures deter police misconduct? The answer of course depends on the situation.

If a law enforcement officer acts in an objectively reasonable belief that a particular search was proper, applying the rule to exclude the evidence he then seizes, could not possibly have any deterrent effect because there is no misconduct, and hence, nothing to deter.

And in fact, again, based on my experience of talking to police officers over 20 years under these circumstances, not only does it have no deterrent effect, but it produces a state of mind on the part of the police officers where they begin to wonder what is wrong with the law, and they actually develop a disrespect for the fourth amendment concept because it is applied so perniciously to their activities, that it produces no deterrence, and exactly the opposite effect from the effect intended.

So, in a number of ways, I think that the exclusionary rule, when applied to these circumstances, has been tremendously counterproductive of the respect for the law that it was intended to promote. Where an officer's conduct is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule in any appreciable way, for it is painfully apparent that the officers are acting as a reasonable officer would, and should act under the circumstances. Excluding the evidence can in no way—in no way—affect his future conduct unless it is simply to make him less willing to do his duty, another problem that I have seen on many occasions.

I have had hundreds of police officers say to me, in effect, the hell with it; why don't we just flush the dope down the toilet next time instead of bothering to come over to this office and have you tell me all these rules and regulations that change from week to

week, that we have no opportunity to follow, and it just results in everybody's waste of time.

We continue to try to recruit them in the other direction, but it is very, very difficult when you are dealing with honest police officers applying the law, and the courts destroy the good work that they put in.

If I can spend 1 second and then I will be finished, Mr. Chairman. The facts of the kinds of cases that we are talking about are rather dramatic in showing what we are talking about with the good faith exception.

These are the facts of an actual case in Colorado. On September 29, 1981, Darlene Bergen was outside her home in Denver sweeping the porch, a citizen living in a community. She saw a man walking on the opposite side of the street and observed him briefly peering into the front window of the house across from hers.

After observing him apparently looking into other windows at the same house, she saw him stop at another house, after which he disappeared from her view. The next saw him an hour later at a bus stop next to her house. He had taken off his shirt and was using it to cover a television set. He appeared nervous to Mrs. Bergen and she called the police.

For years, we have been asking citizens to do exactly what Mrs. Bergen did. She knew what she saw, and she did what she should have done: she called the police.

Officer Freeman, a 21-year police veteran was the first to respond to the dispatcher's report of a possible burglary suspect.

He asked the respondent for identification. The respondent had none. Other officers then arrived at the scene. They asked respondent various questions to which he responded that he had bought the television set from someone in the neighborhood for $100 and was taking it home.

He was wearing an undershirt and had wool gloves in his back pocket. Mrs. Bergen came outside and identified herself as the person who called the police, respondent was arrested and then searched. Under his shirt, police found the television set, a video game, $140 in cash, five rings, including two class rings bearing different initials, and women's jewelry.

Sometime later, they were able to track all of that property to burglaries in the neighborhood, and what happened to that case? The case was thrown out of court because it was held that Officer Freeman's conduct was illegal. This resulted in I think—I wonder what Mrs. Bergen thought when that happened.

Here is a woman living in a neighborhood. She calls the police, the police come—no decent citizen would do anything else—and the case gets kicked out. And the court felt well, there is no reasonable good faith exception, so that is just life in the big city.

These are unfortunately the facts of a case that was originally entitled *State of Colorado* v. *Quintero.* That is a case that made its way to the U.S. Supreme Court. Unfortunately, Mr. Quintero passed away before the case could be argued and it was mooted out.

But again, I keep harping back to my own experience. That is similar to the kinds of cases with which I have dealt over the years, where police officers performing good and decent police work

then go into court, or into a district attorney's office, and find cases kicked out, and potential felons freed back into society.

We firmly believe that this is a good approach, it preserves the values in the fourth amendment, it will restore respect for the law that has been lost by decent citizens and especially police officers, and it in no way compromises the concept of liberty that we believe is important in this country.

Mr. Chairman, may the remainder of my statement be received in the record, and I will be happy to answer questions.

Senator MCCONNELL. It will be inserted at the appropriate place.

[The statement follows:]

Department of Justice

STATEMENT

OF

STEPHEN S. TROTT
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice and of the Administration on legislation to modify the exclusionary rule. As you know, the exclusionary rule is a device through which a court excludes otherwise admissible probative evidence solely because it determines that the evidence was obtained improperly. As such, as the Supreme Court itself has remarked, the rule "deflects the truthfinding process and often frees the guilty." 1/ Such a doctrine, when applied in such a way as not to produce any corresponding benefit for society, is intolerable. It hampers the police in honestly but aggressively seizing evidence of crime, and worse, it destroys the respect of our citizens for the law and the judicial system. This Administration regards legislation to restrict the application of the exclusionary rule to those cases where there has been real police misconduct as one of its most important goals in the criminal justice area.

Mr. Chairman, almost four years ago, on October 5, 1981, D. Lowell Jensen, my predecessor as head of the Criminal Division, had the privilege of appearing before the Subcommittee on Criminal Law to suggest legislation to provide that otherwise admissible evidence should not be excluded on the grounds that its seizure violated the Fourth Amendment if the search or seizure was undertaken in a reasonable good faith belief that it was in conformity with that amendment. A lot has happened since then.

In the last Congress, the Senate passed S. 1764, a bill that provided for a reasonable, good faith exception to the exclusionary rule by a vote of 63 to 24 on February 7, 1984. A few months thereafter the Supreme Court in the Leon and Sheppard cases [2/] in effect carved out such an exception for cases involving search warrants. The Court squarely held that the Fourth Amendment exclusionary rule should not be applied so as to bar the use of evidence obtained by law enforcement officers acting in objectively reasonable reliance on a search warrant issued by a neutral and detached magistrate, even if the warrant is ultimately found to be invalid.

Although the Supreme Court has now effectively laid to rest any real argument that the exclusionary rule is constitutionally required, the House did not see fit to enact S. 1764 or any other exclusionary rule bill. It is therefore necessary that the Senate act again to codify the Leon and Sheppard holdings, and, even more important, to extend their limitation on the rule to search and seizure cases where search warrants are not involved. I will also suggest that the Congress should act to forbid courts from acting on their own volition and applying the exclusionary rule in contexts other than the Fourth Amendment.

Mr. Chairman, in the last Congress, the Committee produced an excellent report on S. 1764 which discussed the origin and development of the exclusionary rule in some detail. [3/] In light of that report, I will not go into the history of the rule in any great detail. But it must be remembered that the rule is merely a judicially created one. It is not set out anywhere in the Constitution or the Bill of Rights. It was not even stated by the Supreme Court until 1914 -- well over a century after the Constitution was adopted -- in Weeks v. United States. [4/]

Although the argument was sometimes raised in the past that the exclusionary rule was required by the Fourth Amendment, in the ten or twelve years before Leon and Sheppard, the Court made it increasingly clear that this was not the case. Leon and Sheppard then nailed down the point that the rule was not constitutionally mandated. Rather, the Court characterized it as "a judicially created remedy designed to safeguard Fourth Amendment

Rights generally through its deterrent effect, rather than a personal right of the person aggrieved." 5/

Thus, the question becomes one not of law but of policy. The Court in Leon stated -- as it had in a number of other recent cases -- that the question of whether evidence should be excluded must be resolved by weighing the costs and benefits of preventing the use in evidence of inherently trustworthy tangible evidence. Let's think for a minute about who benefits when the rule is applied and evidence is excluded. Pretty clearly, the defendant benefits because the jury never gets to see or hear about the very evidence that would in most cases prove his guilt -- the bag of cocaine, the gun used to murder a law enforcement officer, or the satchel of top secret documents destined for a Russian KGB agent. Just as clearly, society loses in a case such as this when a guilty person is returned to the streets, unless, somehow, excluding the evidence and freeing the criminal serves some even more important purpose like deterring misconduct on the part of the police.

Therefore, the question we have to ask is this: Does applying the exclusionary rule to keep out of evidence something that a court believes has been seized in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures deter police misconduct? The answer, of course, depends on the situation. If a law enforcement officer acts in an objectively reasonable belief that a particular search was proper, applying the rule to exclude the evidence he then seizes could not possibly have any deterrent effect because there is no misconduct and hence nothing to deter. I might also add that applying the rule in such a case results in attaching a false label of "police misconduct" to what is, in fact, proper and commendable police conduct. This adversely affects the whole criminal justice system by fostering the public's perception that the police have engaged in lawless conduct when this is simply not the case.

As the Court in Leon summed it up: "[W]here the officer's conduct is objectively reasonable, 'excluding the evidence will

not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that ... the officer is acting as a reasonable officer would and should act under the circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty...'"

While Leon was, as you know, limited to cases involving search warrants, its reasoning applies equally strongly in and should be extended to warrantless searches as well. Applying the exclusionary rule in cases in which a law enforcement officer has acted in a reasonable belief that a particular type of search -- typically a search incident to an arrest or a search of an automobile -- could be conducted without a warrant and was otherwise proper cannot possibly have any deterrent effect on misconduct because, by definition, there is no misconduct. What is really involved when such a search is ruled in violation of the Fourth Amendment is a determination by a court, usually years after the officer's confrontation with the criminal, that his actions did not quite comport with the requirements of the law of search and seizure as it has been developed by thousands of appellate court decisions over the years. To exclude such evidence because a court finds the officer should have acted differently, even though it also finds he acted reasonably, can have but one result: the unjustifiable acquittal of a guilty defendant.

An acquittal in a case such as this is simply too high a price for society to pay. It is the elimination of this result that we seek to end by our legislation. It is important to keep this goal in mind because I know that certain groups have claimed that our proposals to restrict the application of the exclusionary rule would encourage police misconduct. That is simply not the case. We do not intend to use illegal methods to combat crime, but at the same time we cannot tolerate the freeing of guilty criminals without a valid reason.

Turning now to S. 237, this bill is identical to S. 1764 which the Senate passed in the last Congress before the Leon and Sheppard cases were decided. As you know, S. 1764 was drafted

and strongly supported by the Department. Nevertheless, we would propose one minor amendment in light of the Leon case. S. 237 states that evidence will not be excluded on the grounds that the search or seizure was in violation of the Fourth Amendment if the search or seizure was undertaken in a "reasonable, good faith" belief that it was in conformity with that Amendment. The Committee's report on S. 1764 explained that this required that the conduct be found both objectively and subjectively to have been undertaken in good faith. 7/ But in Leon, the Supreme Court determined that it was preferable and sufficient to rely solely on the concept of objective reasonableness and not try to plumb the officer's subjective belief in the legality of his actions. We agree and thus recommend that the phrase in the bill "a reasonable good faith belief" be replaced with the phrase "an objectively reasonable belief."

In addition, we think that legislation limiting the exclusionary rule should extend beyond just its application in the context of the Fourth Amendment. In contrast to its extensive consideration of the rule in cases involving the constitutional requirements of the Fourth Amendment, the Supreme Court has never given in depth consideration to whether evidence should be excluded if it was obtained in violation of a statute, rule, or regulation. However, the Court has held that suppression of evidence is not required for every statutory violation, even when the statute contains an exclusionary rule, and has declined to adopt an exclusionary rule for evidence obtained by an agency in violation of its own internal guidelines. 8/

On the other hand, some lower courts have invoked the exclusionary rule for non-constitutional violations, although the Second Circuit has cautioned that "courts should be wary in extending the exclusionary rule ... to violations which are not of constitutional magnitude." 9/ Moreover, Rule 402 of the Federal Rules of Evidence, enacted in 1975, states: "All relevant evidence is admissible, except as provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority." Arguably, this would prevent the application of the

exclusionary rule for a non-constitutional violation, although no court appears to have considered Rule 402 in this light.

In any event, given the heavy price in terms of the truth finding process exacted by an exclusionary rule, coupled with the Supreme Court's holding that the rule is not required even for constitutional errors, we think it is important for Congress to legislate the principle that when the underlying violation is not of constitutional magnitude, the exclusionary rule ought not to be invoked by a court unless a statute indicates that it should be so applied. Accordingly, we recommend that a new section be added to title 18 specifically stating that except as provided by statute or rule of procedure, evidence which is otherwise admissible shall not be excluded or suppressed in a federal court proceeding on the ground that the evidence was obtained in violation of a statute, rule, or regulation.

If the Committee decides to adopt this proposal for limiting the exclusionary rule's application in non-constitutional situations, the limitation of the rule for constitutional violations, as set out in S. 237 needs to be modified by eliminating any reference to statutory authorization for the exclusion of evidence. For the sake of clarity, I have attached as a one-page appendix to this statement new sections 3508 and 3509 to reflect these changes. 10/ We urge the Committee to modify S. 237 so as to set out both of these new sections.

In sum, let me emphasize again that legislatively limiting the exclusionary rule so as to prevent its abusive application is critically important. Federal law enforcement efforts should not be hampered by an evidentiary rule that can operate to turn loose hoodlums and spies who belong in jail. Moreover, limiting the exclusionary rule would have the desirable affect of encouraging more of the states to do the same. Finally, limiting the rule would send a message to the law enforcement community and the public that the Congress will not stand idly by while courts throw out evidence by second-guessing the actions taken by reasonable police officers in obtaining it -- actions often taken during a sudden, dangerous confrontation with a criminal.

§ 3508. Limitation of the fourth amendment exclusionary rule

Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was undertaken in an objectively reasonable belief that it was in conformity with the fourth amendment. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable belief, unless the warrant was obtained through intentional and material misrepresentation.

§3509. General limitation of the exclusionary rule

Except as specifically provided by statute or rule of procedure, evidence which is otherwise admissible shall not be excluded or suppressed in a proceeding in a court of the United States on the ground that the evidence was obtained in violation of a statute or rule of procedure, or of a regulation issued pursuant thereto.

FOOTNOTES

1/ Stone v. Powell, 428 U.S. 465, 490 (1976).

2/ United States v. Leon, ___U.S.___, No. 82-1771 (July 5, 1984); Massachusetts v. Sheppard ___U.S.___, No. 82-963 (July 5, 1984).

3/ Report No. 98-350, 98th Cong., 2d Sess.

4/ 232 U.S. 383 (1914).

5/ Leon, slip op., p. 7.

6/ Leon, slip op., pp 20-21.

7/ Fn. 3, supra, p. 21.

8/ See United States v. Donovan, 429 U.S. 413, 432-434 (1977), and United States v. Caceres, 440 U.S. 741, 754-757 (1979).

9/ See United States v. Burke, 517 F. 2d 377, 386 (2d Cir. 1975). Our report on S. 237 dated August 20, 1985, discusses these cases and the entire question of eliminating the exclusionary rule for non-constitutional violations in greater detail.

10/ We note that any new sections added should start with 3508, not 3505 as is set out in S. 237. Sections 3505-3507, dealing with foreign evidence, were added by the Comprehensive Crime Control Act of 1984.

Senator McCONNELL. I notice that the Senator from Ohio and the Senator from Arizona have joined us. Senator Metzenbaum, do you have an opening statement?

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. I appreciate your holding the hearings on this bill as well as the other criminal law bills that are before the committee. It is particularly important that we hear testimony on this issue of changing the exclusionary rule. It should be pointed out, as we all know, that the recent Supreme Court decisions in this area, really zero in on the question. I do not know why we need to go further. When you have an amendment, or proposal, and you say that the search was undertaken in a reasonable good faith belief that it was in conformity with the fourth amendment, I would like to give a test to all the police officers of this country on the fourth amendment.

I think that proposed is really calling upon them to have a knowledge they don't have. I am not so sure that the mayors, or the chiefs of police, or anybody, would be in a position to speak to that, determine whether a search is in conformity with the fourth amendment.

Let us not kid ourselves: The Founding Fathers adopted the amendment because of the practices of unwarranted searches of these homes. Now, as our witness points out, you can always make out an egregious case in order to make a point, but sometimes, you have to look at the overall good, the overall value of our constitutional protections. I remember very well, many years ago, when the Kefauver committee was conducting hearings, and so many alleged criminals were taking the fifth. There was a big move on at that time to amend the Constitution to eliminate the fifth amendment.

Well, it was not eliminated and it has been very difficult to cause changes to be brought about in connection with the Constitution; but I seriously question whether or not this proposed legislation is itself constitutional.

And although I respect those who are making this effort to move forward with this bill, my own best judgment tells me that it is not in the Nation's best interest to do so at the moment. I think that there may be the votes, because it did pass the Senate previously. But it did not pass with my support at that time, and I do not think will have my support at this time. However, I would guess that if the matter is brought to the floor, it still might have the necessary votes.

That does not make it right, and I would respect my colleagues' right to be wrong, if they see fit to pass it in this instance.

Senator McCONNELL. Thanks, Senator Metzenbaum. Senator DeConcini.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DECONCINI. Mr. Chairman, thank you. I support S. 237 which amends title 18 of the United States Code, by adding the new section, 3505 to chapter 223. The bill before us provides that evidence obtained as a result of a search and seizure, and which is

otherwise admissible, shall not be excluded in a proceedings in a court of the United States, if the search and seizure was undertaken in a reasonable, good faith belief that it was in conformity with the fourth amendment.

The exclusionary rule is a judicially created rule under which evidence is barred from introduction at a proceeding such as a criminal trial, if the evidence is determined to have been obtained as a result of a search or seizure that violated the first clause of the fourth amendment.

The rule is of comparatively recent vintage and was not even applied by the Supreme Court in the context of the fourth amendment until 1914, 123 years after the the fourth amendment was adopted.

Mr. Chairman, I have a full statement that I would ask to put in the record. Let me just add to that statement, that having been a prosecutor, I have witnessed the so-called egregious cases that the Senator from Ohio talked about, and these are cases against all society. When a criminal is totally relieved of the entire evidence against him and ultimately does not have to answer for the crimes that he might have been involved in, to me, all of society pays. This is a carefully drafted amendment which does not deprive people of their fourth amendment rights but gives some direction to the Court, as the Court has given to the Congress, to make amendments and alterations of this rule.

So, Mr. Chairman, thank you for allowing me to be here and I ask that my full statement be put in the record.

Senator MCCONNELL. Without objection, that will be done at this point.

[Prepared statement follows:]

PREPARED STATEMENT OF SENATOR DENNIS DECONCINI

Mr. Chairman, I support S. 237, a bill that amends title 18 of the United States Code by adding a new section 3505, to chapter 223 to limit the application of the fourth amendment exclusionary rule in Federal court proceedings. The bill will provide that evidence obtained as a result of a search and seizure and which is otherwise admissible shall not be excluded in a proceeding in a court of the United States if the search and seizure was undertaken in a reasonable, good faith belief that it was in conformity with the fourth amendment.

The exclusionary rule is a judicially created rule under which evidence is barred from introduction at a proceeding such as a criminal trial if the evidence is determined to have been obtained as a result of a search or seizure that violated the first clause of the fourth amendment. The rule is of comparatively recent vintage and was not even applied by the Supreme Court in the context of the fourth amendment until 1914, 123 years after the fourth amendment was adopted; it has only been held applicable to State criminal proceedings for the past 22 years.

There are no constitutional or statutory provisions which specifically set limits on what is meant by an "unreasonable" search or seizure. Instead the law in this area is an amalgam of cases dealing with a vast range of issues relating to the undertaking of searches and seizures. Yet courts continue to apply the rule even as they continue to develop the law of search and seizures. The heart of the present problem in application of the rule is that it has been expanded gradually by the courts to apply in situations in which the rule cannot possibly serve its primary purpose of deterring police misconduct. In my experience as a former prosecutor, I have seen this distortion of the rule's purpose result in grave injustice as well as a substantial cost to our society as law enforcement officers and private citizens alike have lost faith in our criminal justice system. I have seen, as the Supreme Court has stated, that the rule "deflects the truthfinding process and often frees the guilty."

This bill is intended to enhance the operation of the Federal criminal justice system by allowing courts greater access to all reliable evidence relevant in deter-

mining the guilt or innocence of the defendant, and to promote renewed respect for that system as a search for the truth in the minds of our citizens. It is intended to aid the courts in that search for the truth and in criminal cases, where the police have reasonably tried to apply the complex law of search and seizure, insure that the guilty are convicted and the innocent are acquitted.

This bill will not eliminate the exclusionary rule. Rather it will elinninate the disproportionate application of the rule, and the disrespect for the law that application engenders. We must allow the courts to grant a remedy for the violation of Fourth Amendment rights which matches the seriousness of the violation while still deterring willful or negligent police misconduct.

For these reasons, I urge my colleagues who are concerned about crime in America, and the perception people have of our legal justice system, to support this bill.

Senator MCCONNELL. I see that our distinguished ranking member of the committee has joined us. Senator Biden, do you have an opening statement?

OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator BIDEN. Yes; I do. I thank the Chair and my colleagues for their indulgence in hearing me in light of the fact that I am late.

Mr. Chairman, no one who has worked in law enforcement or the court system, as most members of this committee have, and as the distinguished chairman of the full committee has, can be satisfied with the state of search and seizure laws to this day.

The fourth amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure, shall not be violated and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

In 1914, the Supreme Court, in *United States* v. *Weeks,* decided the obvious: That the fourth amendment is not self-enforcing, that some mechanism is needed to give life to the provision.

The Court's response to this situation was to create the so-called exclusionary rule. The rule has been much criticized over the last 70 years, and as Justice Cardozo put it: It makes no sense to free an obviously guilty person charged with a serious crime because, "the constable has blundered."

Mr. Chairman, it is easy to criticize the exclusionary rule, but we must not allow such criticism to blind us to the fact that we must have an effective mechanism for enforcing the fourth amendment.

Chief Justice Burger pleaded with the Congress in the early 1970's, in the *Bivens* case, to develop an amendment to the Federal torts claims statute to create a more effective civil remedy against the Federal Government for law enforcement abuses, so that it might serve as an alternative to the exclusionary rule.

I believe that only after we enact tort claims legislation and have had an opportunity to see how it works in action, should we consider significant reform of the exclusionary rule.

That is the first reason that I think it is premature to move on the exclusionary rule bill at this time. The second reason is, as we all know, last year the Supreme Court created a good faith exception to the exclusionary rule with regard to cases where the warrant is issued.

Most legal scholars who have examined closely the language of the Court's decision and have looked at the direction in which the

Court is heading, have concluded that the Court will extend the good faith defense to cases in which a warrant is not used.

By not acting on tort claims legislation, I think we make it unlikely for the Court to act because they will be reluctant to make such significant modifications to the exclusionary rule without there being another mechanism for enforcing the fourth amendment.

Mr. Chairman, in conclusion, I think that the step that needs to be taken now is not to enact the exclusionary rule, a rule that has served us well, and which, in my judgment is responsible, more responsible than any other single factor for the high standard of police behavior in this country, but to enact the tort claims legislation.

I hope this committee will agree and I hope that my colleagues will look at S. 492, the bill that I have introduced, the Tort Claim Act, as an alternative.

One last comment I should make, Mr. Chairman. The Justice Department, as I understand it, has a study that is under way on the effects of the Court's decision on the exclusionary rule, and there are a number of outstanding questions relating to the impact of the Court's two decisions in the *Sheppard* case and the *Leon* case, that I think warrant us slowing down just a little bit and taking a look at the Justice Department's study that I understand is under way, and will not be done for some time, and moving expeditiously to deal with the Tort Claims Act. I thank the Chair for his indulgence and I anxiously await the testimony of the witnesses who both propose significant change, and those who argue against any change. Thank you, Mr. Chairman.

Senator MCCONNELL. Thanks, Senator Biden. Mr. Trott, S. 237 seems to set up a rebuttal presumption of good faith in law enforcement, unless there is evidence that the police acted to intentionally misrepresent the facts in obtaining a warrant.

Does this approach create the potential for abuse, that might outweigh the benefits of the modification?

Mr. TROTT. Mr. Chairman, I do not believe so. I think this is a relatively simple test that the judges of the Nation will be able to cope with. Each situation will be approached as the situation is.

There will be opportunity for cross examination of the officers, and for an examination as to whether there is an objective good faith belief in the constitutional cleanliness of the conduct.

I do not really think it sets up a presumption; it just presents the issues squarely to a judge for decision.

Senator MCCONNELL. The Supreme Court, as several Senators have mentioned, has recently issued two decisions in the field of search and seizure that set up good faith exceptions for evidence that was obtained through a defective warrant. Why should the Congress interfere in this area of the law which is evolving on its own?

Mr. TROTT. Well, No. 1, I think the evolution has been quite slow, but No. 2, I do believe that Congress has a direct stake in this, and an interest in remedying a situation that still cries out for change.

This is the type of issue that was addressed last year, and as I pointed out before, the Senate really overwhelmingly decided that

this was in the best interests of law enforcement in the United States.

Senator MCCONNELL. Senator Biden.

Senator BIDEN. Thank you. Mr. Trott, as I indicated in my opening statement, it is my understanding, in part based upon the American Bar Association's written statement, that the Department of Justice through the National Institute of Justice, now has a major study under way looking at the impact of last year's *Leon* case in which the Court created the good faith exception to the exclusionary rule for searches in which a warrant is used.

The ABA says the purpose of the study is to look at the impact of *Leon* on police behavior and training practices. Is such a study being conducted, and what is your understanding of the purpose? And if there is such a study, when do you anticipate it will be completed?

Mr. TROTT. Mr. Chairman, I am not completely up to date on that. I would be delighted to respond to your questions in great detail, in writing, just as soon as we possibly can.

[The information follows:].

U.S. Department of Justice

Criminal Division

Assistant Attorney General

Washington, D.C. 20530

OCT 17 1985

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Honorable Joseph R. Biden, Jr.
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator Biden:

At the October 2, 1985 hearing on the exclusionary rule, you inquired about a study of the effects of the Leon case being conducted by the National Institute of Justice (NIJ). I have been informed by the NIJ that shortly after Leon was decided, Deputy Attorney General D. Lowell Jensen suggested that an effort be made to determine the effect of that decision on police practices. As a result, the NIJ made a grant of $148,414 to the Police Executive Research Forum in Washington, D.C. to examine the effects of Leon on police search warrant practices.

The project has three specific purposes: to learn whether and in what ways the Leon decision has changed the search warrant process; to determine the extent, nature, rationale and trends in regulations of the search warrant process imposed by the state supreme courts; and to locate especially constructive police administrative procedures relevant to the search warrant process.

The initial data for the survey was gathered by telephone interviews of police and prosecutors in a sample of thirty metropolitan areas throughout the country. Subsequently, site visits were conducted at seven cities whose search warrant procedures had been documented in a 1984 report written under an NIJ grant to the National Center for State Courts. An analysis of the data is now underway and a draft report is expected in February of 1986. It is anticipated that in addition to a comprehensive final report, the research will result in a 25-50 page summary of the study's findings for practitioners and an article length summary for a law journal.

During the hearing you also suggested that amending the Federal Tort Claims Act (FTCA) should take precedence over efforts to limit the exclusionary rule and you asked for our views on this issue. As you know, amending the FTCA to allow

persons who are subjected to unlawful searches or seizures to sue the government for money damages has been frequently suggested as an alternative to the exclusionary rule. In fact, the Chief Justice's dissent in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 422-424 (1971), suggested just such an approach. During the past several years, however, the Department has been of the view that providing a reasonable, good faith exception to the exclusionary rule was the most effective way of limiting the rule to its proper function of deterring police misconduct and that the question of amending the FTCA should be considered separately from the exclusionary rule. In essence, the Supreme Court's adoption of a reasonable good faith exception to the exclusionary rule for warrant cases in Leon and Sheppard supports this position. We think it is now clear that it is not necessary to amend the FTCA to provide an alternative remedy to the exclusionary rule for victims of unlawful searches or seizures.

Nevertheless, as you are aware, for reasons unrelated to the exclusionary rule, the Department has long sought amendments of the FTCA to immunize federal employees from civil liability for constitutional torts committed while in the performance of their duties and to make the United States, not the individual employee, the sole defendant in such cases. Questions have arisen as to whether amendments of the FTCA to achieve these results should apply just to law enforcement and investigative officers or should extend to all federal employees. Moreover, there is the question of the extent to which the reasonable good faith of the federal employee who committed the alleged tort should be available as a defense to the United States if it is substituted as the defendant. I note that your bill on this subject in the present Congress, S. 492, raises these issues. The Department is preparing a report on that bill for the Judiciary Committee at the present time and we hope to finish this task shortly. Meanwhile, as I indicated, we think that the consideration of legislation limiting the exclusionary rule should proceed independently of the FTCA amendments.

You will probably recall that during the hearing we discussed that portion of the Leon majority opinion in which the Court stated that exclusion of evidence would still be appropriate in certain situations. Specifically, at page 28 of the slip opinion, Justice White noted that the exclusionary rule might be applied if the judicial officer who issued the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; if the warrant was issued by a judicial officer who abandoned his judicial role (such as by personally taking part in the search) so that he could not be considered neutral and detached; if the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its

existence entirely unreasonable; or if the warrant was so facially deficient (such as by failing to particularize the place to be searched or the things to be seized) that the executing officers could not reasonably presume it to be valid.

You inquired if these four "telltale" signs of bad faith should be incorporated in a statute imposing a reasonable good faith exception to the exclusionary rule. In effect, the first and the last of these indicia of bad faith, the supplying of false information and relying on a warrant so facially deficient that it provides no direction where to search or what to seize, would be covered in the final sentence of the legislation we have proposed. (As I indicated in my statement, we favor modifying S. 237 slightly to comport with Leon and rely solely on the objective reasonableness of the officer's actions so that the final sentence would read: "A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable belief [that the search was in conformity with the Fourth Amendment], unless the warrant was obtained through intentional and material misrepresentation.") Clearly, supplying false information in the affidavit would destroy the presumption that the search was proper, and a search conducted pursuant to a warrant that gave no direction as to where to search or what to seize would in essence have no scope, thus also destroying the presumptive validity of searches conducted pursuant to warrants.

Similarly, our suggested revision of S. 237 already includes the third instance mentioned by the Court where the reasonable good faith exception to the rule would not apply, the situation where an officer relies on a warrant based on an affidavit so deficient in showing probable cause as to make the reliance unreasonable. As you know, we favor language stating that evidence would not be excluded on Fourth Amendment grounds "if the search or seizure was undertaken in an objectively reasonable belief that it was in conformity with the Fourth Amendment." While searches pursuant to warrants would be presumptively valid, the presumption would quickly disappear in a case in which the affidavit to support it showed no indication of probable cause worthy of official belief.

Finally, it would be extremely difficult to codify the concept that no exception to the exclusionary rule should be made based on reasonable good faith where the judicial officer departs from his neutral and detached role. While we agree that applying the exclusionary rule in such a case of judicial misconduct makes more sense than in cases of alleged police misconduct, we think that the instances of magistrates departing so completely from their proper role as to justify the application of the exclusionary rule would be so few and yet so obvious that the courts could adequately apply the rule in such situations without

legislative guidance. For example, in Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979), the case that Justice White cited as an example of a magistrate's total departure from his proper role, the magistrate actually took part in the search and ordered the seizure of hundreds of items for which he had not previously found probable cause to seize when he issued the warrant.

I hope that the above has been responsive to your questions and that the Committee will quickly give favorable consideration to this important area of providing reasonable limitations on the exclusionary rule.

Sincerely,

/s/ STEPHEN S. TROTT

Stephen S. Trott
Assistant Attorney General
Criminal Division

cc: Honorable Strom Thurmond
Chairman, Committee on
the Judiciary
United States Senate

Senator BIDEN. That would be very helpful. I would appreciate it. A followup question that I have is that Justice Blackmun made the following statement in the concurring opinion in the *Leon* case, and I quote:

If it should emerge from experience that, contrary to our expectations, the good faith exception to the exclusionary rule results in a material change in police compliance with the fourth amendment, we shall have to reconsider what we have undertaken here.

Do you agree with the Justice's statement, if the effect of either the *Leon* case and/or of this legislation passes?

Mr. TROTT. Senator, I think the *Leon* and *Sheppard* cases were decided 2 or 3 days before I was to address the National District Attorneys Association training conference in Houston, Texas.

I was going to talk about some innocuous subject when *Leon* and *Sheppard* were decided. I tore up my speech and I wrote a new speech on *Leon* and *Sheppard*, and as a matter of fact, the key element of my speech was to quote the exact language that you just read from Justice Blackmun's observations, and I pointed out to the prosecutors who were there, in a career prosecutor training course, that the responsibility for making sure that the fourth amendment was protected, and that this new exception was handled with responsibility, fell on our shoulders. And I said each prosecutor, and each police officer in the United States ought to make it a part of his and her own personal agenda, to make sure that Justice Blackmun's concerns never come true, and that we are able to demonstrate, with objectivity, that we have lived up to what I call the challenge of the good faith exception to the exclusionary rule, to prove that we can do what we have said we can do, and that is, guard the fourth amendment, and at the same time vigorously pursue crime. I would be delighted to send you a copy of this.

It is my view, after talking to the U.S. attorneys, that we have lived up to that challenge thus far, and that the results during the last 1½ years of *Leon* and *Sheppard* have been quite positive.

The fourth amendment continues to be respected. This was a good step in the right direction. Law enforcement and prosecutors have shown that they can live up to these exhortations, and we are quite confident that we will continue to do so.

Senator BIDEN. I am not being solicitous, when I suggest that I have no doubt about the good faith of the vast majority of the law enforcement agencies in this country, and the Department of Justice in particular, but my specific question is, that if, in fact, it were shown that it did impact negatively upon the conduct and performance of police agencies in this country, do you believe that we should then go back and attempt to legislatively remedy that?

Mr. TROTT. Well, as a rhetorical answer to your question, the answer certainly would have to be yes. If somehow this produces chaos, and the fourth amendment becomes ignored, and police agencies all over the country, or even in certain areas, start running around abusing the dickens out of the fourth amendment, I would be the first one to call for some tightening up of the process.

But I see it just the other way. This is a situation where the responsibility is placed where the authority is for carrying out these decisions, and the response that I have seen, nationally, is the same response I tried to describe for you earlier: Law enforcement all over the country saying, it is now on us to do this right. If anything, it is spurring agencies on to make sure that their police officers are trained well enough to qualify for these new exceptions that are out there. So, I am——

Senator BIDEN. I am not disagreeing with that. The only point I am trying to make is, if we go back and look at the exceptions of those things which warrant my discomfiture with the exclusionary rule over the last 70 years, and the Justice Department's more acute discomfiture with the exclusionary rule, it might be argued that it is a fairly small body of cases that are in fact involved.

Let me put it this way: Do you believe that the existence of an exclusionary rule has had a dramatic impact upon the administration of justice in this country?

Mr. TROTT. A dramatic impact, yes; not all positive.

Senator BIDEN. That is what I mean. A dramatic negative impact?

Mr. TROTT. I believe that it has. On balance, I think the negatives far outweigh the positive aspects of this, and with apologies to the chairman for repeating what I said before: I have been a prosecutor for 20 years. I have released hundreds and hundreds and hundreds of felons, talking to police officers, trying to explain why what they did, although they thought it was objectively reasonable at the time, failed to take into consideration a new case here and a new case there, that changed the rules in midstream, about which they were completely unaware.

Senator BIDEN. I was only involved in the criminal justice system for 4 years, and I was on the other side of it, and you must have dealt with a bunch of shoddy officers if you had—you are telling me you have had hundreds and hundreds of cases——

Mr. TROTT. Oh, yes, and let me give you an example how. In California, a lot of arrests involve impounding automobiles that are being used by criminals, and the rule for a long period of time was, when you arrest somebody and impound an automobile in connection with that arrest, you may inventory that car, and take everything that is in the car out of it, and list it. And if in the process of running an inventory, you discover a gun, narcotics, stolen property, all of that can be used against whomever. It is not an illegal search and seizure to inventory a car.

All of a sudden, out of the blue, the California Supreme Court decided in the case of the *People* v. *Mazzeti*, that it was an illegal search and seizure. Instead they should just lock the car.

I had rafts and rafts and rafts of cases coming in for 6 months where police officers had impounded cars, listed things and then made cases, and, all of a sudden, because they changed the rules, out they went.

And the police officers looked at me and said what kind of nonsense is this? I said sorry, they apply this stuff retroactively and now we are in court, the rules shift. Over and over again that occurs.

Now, it takes a long time for police officers to catch up. Finally, 6 months later, then they caught up, and they say, OK, well, the new rule is you have got to lock the car; fine and dandy.

But then we went through a series of cases where, if you recovered a stolen car, the theory was, oh, you could search a stolen car because the crook driving it had no privacy interest in the car. Then the California Supreme Court came down with the *Dallas* case, and found a right of privacy in a stolen vehicle, suppressing sawed-off shotguns, drugs, and other weapons, and we had a whole raft of cases following that where police officers, in reliance on what they thought the law was in the past, found themselves caught short and their cases were going out the window.

We had another series of cases where it said, well, if you arrest somebody carrying a briefcase, you can search the briefcase. They all knew that and they all did.

The California Supreme Court came down and changed that, so then you had all these searches that went out the window. Then you had a series of cases on whether or not you could search a suitcase, whether or not you could search a Jack-In-The-Box cup, whether or not you can search a lunchbag, and the police officers ended up throwing up their arms, and most of them simply telling me: "Look. I'm going to do what I think is right and if you clowns want to throw it out, that's your problem, not mine."

This is the kind of disrespect that was promoted for the fourth amendment. I found hundreds and hundreds of decent men and women who are police officers in this country trying their best to do the right thing fighting crime, time and time again running into situations where judges, apologetically to the police officers, in my presence said, "I'm sorry, we're going to have to suppress the evidence in this case, officer. I know you didn't understand the change in the rule and I know you thought you were doing the right thing, but there's a technical rule that you weren't aware of, that requires me to find this to be an illegal search and seizure."

And the officers are not deterred from anything. They go out of the room thinking, this is silly stuff. I think the objective good-faith exception to the exclusionary rule permits no heavyhanded rogue police conduct.

It enables every judge in every courtroom in the United States to spot that type of nonsense behavior and to exclude the evidence, and it also enables every prosecutor to refuse to bring cases behind that kind of contaminated evidence.

But it also enables us to recognize that these are judgments being made in very complex areas, and that the purpose of the rule is to deter police misconduct.

You are deterring nothing, if you are telling an objectively reasonable police officer that what he did was wrong, even though he thought it was right.

Senator BIDEN. Well, it seems to me that for the series of examples that you have cited—and in part I think you would acknowledge and admit that one of your problems is you are from California.

Mr. TROTT. I cannot deny that.

Senator BIDEN. I think that if you go back and look at the 70-year history of the exclusionary rule, what impact it has had on police conduct has been, by and large, extremely positive.

If you look at the way in which law enforcement officers behave in many of the States, my own included, and the State of California, I suspect, prior to the imposition of the exclusionary rule, or the enunciation of the exclusionary rule, I would doubt whether or not you would suggest it did not have a positive impact.

Mr. TROTT. Senator, I would agree with you that the exclusionary rule, as such, has had a positive impact. It has caused training programs, it has caused a lot of good things to happen, but that aspect of the exclusionary rule that has been pernicious and arbitrary, has held back some of the progress that we might otherwise have made, and that is why I think we are getting rid of one part of the exclusionary rule by pursuing a good-faith exception, that cuts against the direction in which we all want to go, which is to continue to promote and preserve the values that are inherent in the fourth amendment.

Because this is the part of it that penalizes a decent police officer and causes that officer to have real confusion as to what he is doing.

Senator BIDEN. Well, let me ask you whether or not the good faith exception should prevail, if the magistrate who issued the warrant was not neutral.

Mr. TROTT. No. I think the *Leon* and the *Sheppard* cases make it clear, that if you are going to a rubberstamp magistrate because you just want to skirt the whole issue, that should be thrown out; it should not be allowed to happen.

Senator BIDEN. Should we write that into the law?

Mr. TROTT. Well, I think the legislative history would certainly include something like that, but I think the test itself that we are establishing, and *Leon* itself, which covers the warrant situation, makes it pretty clear that that is already the case.

Senator BIDEN. Well, the question that I have—let me ask you this, then. Is it the Justice Department's position that the four ex-

ceptions were not advisory but they were a constitutional requirement being dictated by the Supreme Court?

Mr. TROTT. Well, I am not quite exactly sure how to answer that. Whatever they are, they contain values that ought to be promoted, either continuously in the court decisions or in the legislation.

Senator BIDEN. Well, see, that is my problem. My problem is that if in fact it is ruled by a later court, that they were merely advisory, or dicta in the case, and we do not write it into the law, then we have a gaping hole that exists in the law. Because as I said, I was only a criminal defense lawyer, the bad guy, for 4 years, but I know for a fact that there are in every State in the Union, as in mine, certain rubberstamp magistrates that you can go to, and they will issue a warrant for Mickey Mouse, if in fact a proper police officer standing over 6 feet tall, in the proper uniform, suggests that there should be one issued.

So that it seems to me that—I am sorry. Yes, you may.

Senator SPECTER. Thank you very much. Senator Biden. I just passed him a note asking if I might interrupt him for 30 seconds and I will be brief.

Senator MCCONNELL. I recognize the Senator from Pennsylvania.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. I just wanted to commend the chairman for convening these important hearings. I regret that I cannot stay because of other commitments, but I think that this is a very important subject, and I will be following the hearings closely, and I am pleased to see you here, Mr. Trott, and commend you for the good work you are doing. Thank you very much, Senator Biden.

Senator BIDEN. Thank you, Senator.

Senator MCCONNELL. The Chair will note that the subject matter brought out all of the former prosecutors today. Senator DeConcini was here as well.

Senator BIDEN. And so was a defense lawyer.

Senator MCCONNELL. And one defense lawyer. Senator Biden.

Senator BIDEN. It has always somewhat been the odds, Mr. Trott: One defense lawyer against several prosecutors. I have never walked into a courtroom where there have not been more than one, but fortunately, none——

Senator SPECTER. I object. I object.

Senator BIDEN [continuing]. Of them as competent as either of my two colleagues.

If I may proceed. Mr. Trott, you understand my concern, I suspect, because the four exceptions—obviously, if the magistrate was intentionally misled, as pointed out in the *Leon* case; or if the magistrate who issued the warrant was not neutral; or it was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or if a warrant were so factually deficient that the police could not reasonably presume it to be valid; I hope the Justice Department is suggesting that in that case, in any of those cases, the good-faith exception should not exist.

And so it seems to me we should do one of two things, at a minimum. We should either write those exceptions into the law, into

S. 237, or, we should wait for further clarification from the Supreme Court as to what they meant by it.

Because I have, in seeking requests for information on this from legal scholars, both opposing and supporting changes in the exclusionary rule, gotten varying opinions as to whether or not those exceptions constitute the law of the land.

So I wonder if you would comment on how we should handle—first of all, does the Justice Department subscribe to the four exceptions cited, and, second, if so, how should we deal with it?

Mr. TROTT. I think the exceptions are good exceptions. I think they are nothing more than a way of fleshing out what is meant by objective good-faith belief, reasonable belief.

I think the test itself already includes what you are referring to. It would be a further clarification but I do not think a necessary one, to give the courts of this land sufficient direction to know what to do in these circumstances.

Senator BIDEN. Would you have objection to us adding those four exceptions, state them explicitly in the legislation?

Mr. TROTT. Well, Senator, I have to study that, but sitting here right now, no, because I, as a prosecutor, in no way would ever try to sell a case like that to a court because that is not objective good-faith belief, when you are monkeying or tampering with a system in the way that is described in those four circumstances.

Senator BIDEN. Again, I am not being facetious when I suggest that I have no doubt about your reasonable exercise of a, quote, "blanket good-faith exception." I really do not.

But in the history of this land, we have not always had women or men as competent as you sitting in your position. We need only cite the attorney generals that have been dismissed, put in jail, or debarred, to lend credence to the statement I have just made.

So that that is why I am, you know, to cite the old saw, "We are a nation of laws, not men," and we have competent men and women now, but I am always skittish about whether or not we leave it to the good-faith exercise of the good-faith exception by good-faith women and men.

Mr. TROTT. Senator, your observation about rubberstamp magistrates is an accurate one.

In California we used to have a sitting municipal court judge—the superior court judges referred to him as the "law east of the freeway," and whenever they saw a search warrant that was issued by that magistrate, believe you me, they gave it careful and close scrutiny.

The point that I am making is that the system, in many respects, is self-policing. These are situations where you have reviews at different levels of these decisions.

If a magistrate in the first instance makes the decision, it is almost axiomatic, especially in felony cases, that there will be other judges along the line, before the trial, that will be reviewing this decision, and then of course the appellate courts of each State, and the Federal Government, remain available to self-police and make sure that the exceptions that you are concerned about—and that we are concerned about—are washed out of the system.

Senator BIDEN. I want to make it clear that—let me try to put this in some sense of proportion, at least how I feel about it.

There are those who argue that the requirement to make a good-faith exception or any other alteration of the exclusionary rule is a matter of such consequence that the republic hangs in the balance.

There are those who suggest, on the other side, that in fact if there is any alteration of the exclusionary rule, that the civil liberties of every American will be in such jeopardy that we will probably be only a step away from a totalitarian state next Wednesday. I do not subscribe to either of those positions. I understand the frustration as to how we got to where we are now, because of the inability to acknowledge any of the abuses that have, in effect, been thrust upon the system and the public by the exclusionary rule, or certain applications of the exclusionary rule.

But I view it more in an incremental sense. It seems to me that we have lived with this so long, that it is wiser to move to exceptions very consciously and very slowly.

For example, there was a move to amend the exclusionary rule prior to the decision in the *Leon* case. I think that was unwise.

We knew it was up before the Supreme Court. Many of us argued the exception would be granted under limited circumstances, and that we should wait to see what the Court does. If you go back and look at some of the legislation that was introduced with regard to the exclusionary rule over the last 10 years, it is out of whack, by a longshot—not what you are supporting but what had been put forward previously—out of whack with the *Leon* case.

The *Leon* case came along, and in the minds of all—except those who believe that civil liberties are in such jeopardy that we are going to collapse tomorrow—it was viewed as a progressive step. Now, I apologize for taking so much time, Mr. Chairman, but since I am the one that badgered the chairman for this extra day of hearing, and the chairman chastened me very accurately, suggesting that if I wanted the hearing I had better damn well show up and have questions. I have got a lot of questions.

And I will either yield now and come back, or pursue one more line of questioning with regard to tort claims.

Senator MCCONNELL. Why do we not see if Senator Simon, who has joined us, has an opening statement.

Senator SIMON. I will yield to the Senator from Delaware.

Senator MCCONNELL. You are on, Joe.

You are paying a heavy price for asking for this hearing.

Senator BIDEN. Do you agree, Mr. Trott, that any modification to the exclusionary rule, by the Supreme Court is more likely, if an effective tort claims scheme is in place before the Court reaches the issue the next time around, assuming we do not move on this legislation?

Mr. TROTT. I am not sure, Senator. It is possible. There is no question about it. The more ways you can shore up the fourth amendment, the more attractive it becomes to loosen some of the safeguards that have been in place.

Senator BIDEN. Would you consider the possibility of moving first on the Tort Claims Act, and after that is in place, then consider this modification? I know you have been supportive of attempting to move the Tort Claims Act, but the exclusionary rule seems to be a matter that is higher on the agenda than the Tort Claims Act.

Is there any prioritizing within the Department, not that there need be—but could you give us a sense of how you in the Department feel about the urgency of each of these? I suspect you will say both are urgent.

Mr. TROTT. Well, I think both are important. I think they stand alone. They can travel together. I think this bill that we are talking about today is, as far as we are concerned, of a greater priority.

Senator BIDEN. My concern is that—I may be mistaken, and I ask any staff, in addition to mine, to correct me on this. But my recollection is, under Attorney General Smith there was a higher priority placed upon amending the Tort Claims Act.

Is that correct, or am I wrong on that? Because we were really working on it. Just speak up, anybody. It is true. That does not mean it is true, but——

Mr. TROTT. I am advised that——

Senator BIDEN. That is my recollection, because I worked like hell on it, and I cannot remember why, other than the merits of it. Someone was pushing me.

Mr. TROTT. I am advised that we included both titles in the Comprehensive Crime Control Act, and I do know that William French Smith placed a high priority on straightening out some of the problems with the Tort Claims Act, no question about it.

Senator BIDEN. And you know the breakdown we had there. It related to—maybe you do not know—but there was a request in the Department's submission for amendment of the Tort Claims Act that we go well beyond police officers, for example, dealing with OSHA.

Mr. TROTT. Sure; yes.

Senator BIDEN. That is where we had a real breakdown.

One of the downsides of being the ranking member of this committee is I know less about the detail of specific items that come before us than I should, and more about all that is happening.

I become more of a generalist, unfortunately, and, my recollection is we have not gotten much of a nudge, this Congress, on the Tort Claims Act.

Have you all made, pushed us on that? I honestly do not recall. And while you are getting briefed, as I have had to be briefed, I may explain, state the obvious, why I am asking the question, because if that is correct, we all know that the way things move here in terms of modification of the criminal law, as we labored for 8 years to get the comprehensive crime bill passed, as little gets done unless the Department is pushing as hard as the Congress is pushing, and to be honest with you, unless it is pushing the Congress sometimes.

Mr. TROTT. I am told—and this refreshes my recollection, that the problem with the Tort Claims Act is that we have been unable to agree at what the fix ought to be.

There is still some disagreement as to exactly what the fix should be; therefore that remains somewhat of a matter that is in limbo.

On the other hand, we are very firm as to what we believe the fix ought to be on the exclusionary rule.

Senator BIDEN. I would like to suggest something, because my view of not moving forward with this exception at this time, may not prevail. Your view may prevail, and the view of the chairman.

But whether or not it does, I would suggest that you consider, in effect, dividing the Tort Claims Act—I realize this is not a hearing on tort claims—between those relating to law enforcement officials, of a police nature, and the other enforcement provisions with the Federal Government. If you do that, I can almost guarantee you, although I speak only for all Democrats, right, Paul? I can only speak for all the Democrats in the Senate; I cannot speak for all the Republicans.

All kidding aside, I suspect we would be able to pass a tort claims bill in this Senate in very short order, if we could settle that problem, and then take up the separate issue of extention beyond traditional police agencies.

But I guess I would ask you to consider that, and I would appreciate, not for this record, or for this hearing, but if you all would get back to me on your feeling about that.

Mr. TROTT. We certainly will.

Senator BIDEN. Well, I really am taking too much of this witness's time. I know we have four or five other witnesses.

Senator MCCONNELL. Several others.

Mr. TROTT. If I may just slide in sideways, I have used a lot of California examples, but one that I quoted earlier, before you arrived, was a Colorado example. So it is more than just a California problem, Senator.

Senator BIDEN. It is basically a Western problem. [Laughter.] OK. I thank you very much, and I thank the Chair, and my colleague from Illinois.

Senator MCCONNELL. Thank you. Senator Simon, do you have any questions of Mr. Trott, or a statement?

Senator SIMON. I do not at this point, Mr. Chairman. I am here to get some wisdom from my colleagues from Delaware and Kentucky, and the witnesses.

Senator MCCONNELL. Thank you, Senator Simon. You may end up presiding at 11:30, if you stick around, because I have to leave then.

Thank you, Mr. Trott.

Our next witness was scheduled to be Jim Smith, the attorney general from Florida, and I understand he is in an airport somewhere; is that correct? So, we will move on down to Prof. William Greenhalgh from Georgetown Law School, who is the former chairman of the Criminal Justice section of the ABA. Professor.

Dr. WASSERSTROM. I am not Professor Greenhalgh. My name is Wasserstrom. I also teach at Georgetown. I think it might make more sense for me to go first since I am going to be very brief and I am just going to respond to some of what Mr. Trott said, if I might.

Senator MCCONNELL. All right.

STATEMENT OF SILAS J. WASSERSTROM, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW SCHOOL, WASHINGTON, DC

Dr. WASSERSTROM. Mr. Trott mentioned for example this case from Colorado and talked about the behavior of the police officer

there, and it seems to me his real objection is to the ruling of the Colorado court and what the policeman did was illegal under the fourth amendment, and it is not really an objection to the exclusionary rule. I mean, a very simple point which people sometimes have trouble, I think, understanding, is that the exclusionary rule only comes into play if the police have violated the fourth amendment as the court interprets the fourth amendment.

Many of the problems which I think the Justice Department perceives in this area are really problems I think with the Court's decisions under the fourth amendment. That is, interpretations of the fourth amendment itself and the kind of powers the police should be allowed to have to search and seize.

His description of the Colorado case I think was meant to make the point that everything this police officer did was perfectly fine.

Well, if everything the police officer did was perfectly fine, then he did not violate the fourth amendment, because all the fourth amendment requires is that the police act reasonably. When the police act reasonably, there is no fourth amendment violation and there is no reason why evidence would be excluded.

He also gave a parade of horribles from California involving decisions of the California Supreme Court concerning searches of cars.

Senator BIDEN. Excuse me, Professor. I hate to interrupt you but since you are going to be brief, I do not want to miss the point.

You are suggesting that the determination of whether or not the police officer acted reasonably, in compliance with the fourth amendment, is somehow a separate and distinct issue from the exclusionary rule. I do not quite follow that.

Dr. WASSERSTROM. Well, if the court determines that the police officer did act reasonably and in conformity with the fourth amendment, then there is no reason the exclusionary rule ever comes into play.

Senator BIDEN. Then the only time it comes into play is when they conclude he did not act reasonably.

Dr. WASSERSTROM. That is right, and that is—I am sorry.

Senator BIDEN. So what?

Dr. WASSERSTROM. Well, if it comes into play only when they have acted unreasonably, then——

Senator BIDEN. But who determines that? The court determines whether it is unreasonable.

Dr. WASSERSTROM. That is right. The court interprets the fourth amendment.

Senator BIDEN. And by determining whether or not it is unreasonable, they are saying that this should fall within the exclusionary rule.

Dr. WASSERSTROM. They are saying first, this violates the fourth amendment; therefore, the evidence should be excluded.

Senator BIDEN. Right.

Dr. WASSERSTROM. That is right. But what Mr. Trott was objecting to——

Senator BIDEN. You are from Georgetown. You have been educated by Jesuits, have you not?

Dr. WASSERSTROM. No. As a matter of fact, I have not. What Mr. Trott was describing in Colorado, I think his point was—if I under-

stood him—was that this police officer acted in a way that should have been found to be constitutional. That is his real complaint.

OK. His complaint, then, is about the court's interpretation of the fourth amendment and not with the application of the exclusionary rule, and it seems to me that his examples from California were making really very much the same point: The court should have permitted searches of those care in those cases. If the court had permitted the searches of the cars in those cases, then what the police would have done would have been legal and there would have been no problem with the exclusionary rule.

The fact that the fourth amendment prohibits only unreasonable searches and seizures makes this bill, it seems to me, entirely unnecessary.

All this bill would do is say that where the police have acted in conformity to the fourth amendment, then the evidence should be excluded. Well, that is the law now.

Let me take up in somewhat more detail his California cases. He said he had hundreds of cases where evidence was excluded. Well, as you pointed out, Senator Biden, that means that he must have been dealing with police officers who were violating the fourth amendment hundreds of times, or the exclusionary rule issue never arises.

It seems to me you cannot have it both ways. You cannot say the police are doing a great job, and yet, there are hundreds of cases where what they have done was illegal.

He said, for example, that he had lots of cases where the police had inventoried cars under a decision of the court which said it was OK to do that.

And then later the court decided that that search was invalid. Those cases involved interpretations of the California State constitution. This bill would obviously have no effect on that; it would not apply in State court at all.

But in any event, those were interpretations of the State constitution.

Now the court announces for the first time that inventory searches of cars are illegal, and according to Mr. Trott, there were hundreds of cases out there where the police had searched the car before the new decision was announced.

Well, when the U.S. Supreme Court announces a new decision which expands the protections of the fourth amendment, it does it prospectively only; the decision does not apply with respect to searches conducted before the decision was announced.

So that kind of situation would never arise in the Federal system because the Court has made it clear that any kind of decision expanding the scope of the fourth amendment—and those decisions are not really likely to be coming down any time soon, I do not think—but when they were coming down, 10 years ago or so, 15 years ago, or so, they were always made prospective.

So police officers who relied on prior law were protected. That no exclusion was ordered anyway. The only thing this bill would accomplish with respect to changes in the law would be this. It would have the effect of saying that when the Court announces a new decision which would invalidate conduct which had previously been legal, that that decision should not apply even to the case itself.

That is, that the exclusion should not be applied even to the case where it is announced. It should never apply to older cases, anyway.

And the problem with that is, that if you do not apply the exclusionary rule to the case where the new rule of law is announced, you deter litigants from ever arguing for changes in the law. They have nothing to gain by it.

Even if they prevail on the court, convince the court that this has been a bad rule, the rule should be that there has to be a warrant here.

If they know that even if they win the case, they are going to lose the war because the evidence is going to come in anyway, then why should they bother to make the argument?

And if they do not make the arguments, then you do not have any kind of movement with respect to the fourth amendment at all. You do not have any kind of progress with respect to the interpretation of what the fourth amendment does or does not require.

Another problem with the good faith exception which is very similar is this. I think police officers everywhere, if they are going to do their job well, need to know just what it is that they are or are not allowed to do under the fourth amendment.

The only way they can know that is by courts telling them, this is OK; this is not OK. If you have a good faith exception the courts are simply going to stop doing that.

In any case where it is sort of close, where what the police did was near the line of illegality, or legality, the court is just going to say, "Well, we do not have to decide whether what they did was legal or illegal."

We do not have to tell you what you can or cannot do. The fact is that what you did was close enough, that you acted in good faith and so the evidence comes in.

Senator BIDEN. Well, is that true? Won't they be saying, the courts, I suspect that in fact they will be defining—if this were to pass—they would be defining much more specifically what constitutes good faith?

Won't they be looking at whether, like in the *Leon* case, it was a biased magistrate, or if no reasonable police officer could believe it to be legitimate, et cetera?

Won't they be further defining what constitutes good faith?

Dr. WASSERSTROM. Well, in the area where you have searches conducted to warrants, as you did in *Leon* and *Sheppard*, the Court did explain to some degree what it is that constitutes good faith.

But I am thinking of cases where the issue is whether or not the police had a sufficient basis to conduct a warrantless search, whether they had probable cause to make an arrest, or whether they had exigent circumstances which would justify making a search without a warrant.

In those cases, let's suppose that what the police have in the way of basis for their search is something that may—some people's view would be enough to justify the search and other people's view would not be enough, the court could elaborate and say: "Look. When you're going to conduct an arrest or a drug transaction, say, on the street, you've got to see at least this much. And if you see this much, let's say an exchange of something wrapped up for

money, that's enough; but if you don't see that, if all you see is somebody handing money to somebody else, that's not enough."

That kind of decision could help the police know what they can and cannot do.

Under the good faith exception it seems to me likely that what is going to happen, when you are dealing with trial courts that are burdened with many more cases than they can handle well, they are going to get a case where the police officer made an arrest, that the trial court is just going to say: "Look. I don't have to worry about whether this actually is probable cause or not; it's close, a close——

Senator BIDEN. Professor, you——

Senator MCCONNELL. Excuse me, Senator Biden. I have got to go. I just want to indicate that Senator Thurmond wished to have an opening statement inserted at the beginning of the hearing.

It is my understanding that through the miracle of aviation, the attorney general from Florida is here, and you can go back to him, Senator Biden, when you would like, and also, I understand that you are willing to take over the hearing, which I appreciate. I want to thank all the witnesses for being here this morning.

Senator BIDEN [presiding]. Professor, as I said, you know much more about this than I, but has not the development of our jurisprudential system been such that in fact, the courts are going to do the exact opposite of what you just suggested?

Notwithstanding they are overburdened, I cannot believe that a trial court and/or an appellate court, is not going to define, more and more clearly, the definition of good faith as they did with defining the reasonable man standard for the last 300 years.

I mean, we have a whole body of law that defines what constitutes a reasonable man.

Dr. WASSERSTROM. The outcome of the case is not going to turn on what they say, you see, because even if they say that what you did, officer, here, was unconstitutional under the fourth amendment, but because of the good faith exception it is close enough to the line, that the evidence will come in anyway.

Then the result is the same in the case, whether or not they find a violation or do not find a violation. You are talking about a tort situation where they are defining how reasonable a man behaves. Well, the outcome of that case turns on how the court decides whether or not the person——

Senator BIDEN. Well, I am probably missing something here, and since I tend to agree with the position you are putting forward, I am maybe somehow not being as sharp as I should be here.

But it seems to me, that in fact there will be many court cases that will turn on whether or not what was done was a good faith exercise by the police officer. That will be an issue.

Dr. WASSERSTROM. Senator, where you are talking about the question of whether or not the police had probable cause—for example, to conduct an arrest, to make an arrest—the question of whether or not they acted in good faith comes down to no more than the question of were they close to probable cause? It is the same question.

Senator BIDEN. Well, in part, it comes down to—let us be blunt about it. Sometimes, it comes down to no more than what the ideological predeliction of the judge listening to the case is.

Dr. WASSERSTROM. That may be.

Senator BIDEN. Just as much as it does whether or not—I mean, I have been before judges who in fact are very, very strong civil libertarians, who will sit there and suggest—notwithstanding how close to the line it is—that in fact it did not meet that judge's standard of what constituted probable cause.

I mean, it seems to me you are painting a very one-sided picture. I agree with the thrust of what you are saying, but to suggest that it will not warrant defense attorneys moving forward to make the argument that in fact what the police officer did did not constitute a good faith exception, is a misrepresentation of what is likely to occur and what judges are likely to do.

Dr. WASSERSTROM. There are two different situations. One situation is one where the defense attorney is asking the court to overrule a prior decision. In that sort of situation, it seems to me unlikely, that the litigants are going to push very hard for that, if at all, because even when the older decision is overruled, the new decision will not help them any.

Because where the police have relied on the old decision, they will be shielded by the good faith exception to the exclusionary rule, and so even if I were to prevail on the court, convince them to change, the court to change its mind about what the law should be——

Senator BIDEN. And that is assuming they are changing a standard that they have heretofore——

Dr. WASSERSTROM. That is the first kind of situation. The second kind of situation is one where what is at issue is whether or not the police acted with the requisite factual basis for their conduct.

Senator BIDEN. As determined by the court?

Dr. WASSERSTROM. Determined by the court. And it seems to me there, that what is likely to happen is, the court is going to say, look, we do not have to say exactly where the line is with respect to the factual basis that you need. If you are close to the line, wherever it might be, then that is good faith.

Senator BIDEN. All right. Well, I would say to you that that will depend in large part on the judge. Let me be very specific. If it is Ab Mikva, and he is convinced that the fourth amendment has been violated, notwithstanding that the court has moved forward, or the prosecution has said that the police officer acted in good faith, Ab, God bless him, is going to sit there and say—he is going to look awfully damn close to find a reason to prove that that was not done in good faith.

Dr. WASSERSTROM. Some judges would do that. I think they would have to say that, "I think you acted in bad faith because this isn't even close to probable cause. I mean, that is the only way you could say it, I think. If it close to——

Senator BIDEN. They do not have to say "close." They would just say: "It does not meet the standard which I, the court, conclude, is good faith."

Maybe we have not practiced before the same judges. Now I admit there is more of the other kind of judges out there who will

say—which worries me—who will say, "By the way, police officers want this guy nailed, there was in fact marijuana or cocaine, or a sawed-off shotgun, or whatever—notwithstanding the fact the fourth amendment has been violated, the guy acted in good faith, he was close—bang. Nail him."

I admit there are more of them than the other, but to suggest that a body of law will not develop defining what constitutes good faith, and that it is not in the interest of the defendant to make the case that it does not meet the good faith exception, seems to me to misrepresent the way the courts work.

Dr. WASSERSTROM. Well, I think unless a court has——

Senator BIDEN. I guess I am not going to get my son into Georgetown Law School, huh?

Dr. WASSERSTROM. I am not on the admissions committee. Unless the court has actually told the police that this is the sort of thing that you should not be doing, it seems to me that the judges will find that, despite the fact that we never told you you cannot do precisely this—the number of judges that will say, nevertheless, what you did was in bad faith—the number is small. Those judges are few and far between. I am not saying there are no judges that do that.

Neither of us has had any experience practicing before a judge operating under a good faith exception, so we are both speculating about how judges are likely to behave.

Senator BIDEN. That is true.

Dr. WASSERSTROM. But my judgment is based on experience trying criminal cases in DC, where the courts generally, the trial courts at least, want to deal with these motions to suppress as quickly, and as expeditiously, as they can, for the most part, and if they can do it by simply saying: "Look. This is a close case. I don't have to decide right where the line is. It comes within reasonable good faith; therefore, the evidence is admissible."

It seems to me that is the way most judges, most of the time, will do it. I am not saying all judges do it all the time.

Senator BIDEN. I do not disagree with that.

Dr. WASSERSTROM. Then you may have some law development, but it is going to be considerably slower than it would otherwise be.

Senator SIMON. Just one question, and unfortunately, I am going to have to move on, and you have, by indirection, answered this I think, but not directly.

Does this bill violate the spirit of the fourth amendment?

Dr. WASSERSTROM. It depends on what you take to be the spirit of the fourth amendment. In my view it does, but the way the Supreme Court has interpreted the fourth amendment over the last 10 years, I would not want to say that this bill is unconstitutional, given the current makeup of the Supreme Court.

That is, if I were simply to predict what the Supreme Court would do about this bill, I have very little doubt that they would find it was constitutional.

Senator SIMON. But it is a substantial extension of the *Leon* decision, is it, or——

Dr. WASSERSTROM. It is a substantial extension of the *Leon* decision and I think it is an extension which extends it to areas where it makes even less sense than it did in *Leon.*

Let me make one other point about the extension of *Leon*. With *Leon* the law, the police have an incentive to get warrants because they are shielded by a good faith exception which will protect them to some degree where they get a warrant.

If you extend the good faith exception and apply it across the board, then that added incentive, which they now have to get warrants, is dissipated. There is no longer any bonus that they get, in a sense, from getting a warrant. They are protected from some kind of good faith, sort of shield; even when they act without a warrant, protected against exclusion. It seems to me that is one of the bad effects of a bill of this sort that extends the good faith exception to those areas where they have acted without a warrant.

Senator SIMON. I thank you.

Senator BIDEN. I would like to ask another question, if I may.

Senator SIMON. I will let you soften your questions and get your son into——

Senator BIDEN. Well, I will, I will. I think I am going to work on Yale with the next question. Pretend you are teaching at Yale, Professor——

Dr. WASSERSTROM. That is where I went.

Senator BIDEN [continuing]. And disregard the law, and just talk about philosophy—I am looking for a philosophic input here, and I am being very facetious about Yale and Georgetown but I am being serious about this question.

Is there any validity to the argument that is made by so many people these days, admittedly on the center right or far right of the political spectrum, that respect for the law has been seriously eroded, as a consequence of many things, not the least of which has been the seemingly ineffective application of the criminal justice standards to people who are clearly bad guys, who clearly have the sawed-off shotguns, who clearly, deal in dope and who walk the streets? And I know that there are a number of cases, and I could cite ones where I represented a defendant, and, quote, "got the defendant off" because in fact I believed his fourth amendment rights were violated, notwithstanding the fact that he was not a good guy.

Unless we do something to remedy these cases where folks—to quote the Assistant Attorney General—with the "sawed-off shotguns get off scot-free" because of, as the public views it, a technicality, will we continue to do harm to the criminal justice system?

By the way, I compliment you on pointing out what I wanted to point out—the distinction between the California Constitution and the Federal Constitution, when Mr. Trott was here.

Second, isn't there a frustration buildup on the part of good, decent police officers, because of what appears to them to be, and in some cases is, a totally frustrating effort on their part to deal with some of the seamier elements of the American public? When things like those stated by Mr. Trott and others happen, doesn't that only make them more cynical, so that they commit more illegal acts against innocent folks out of frustration?

That they, instead of bringing that dope dealer in, shoot him? I am not being facetious. I am being serious.

Do you think there is any merit to those kinds of arguments that are made, and should a committee like ours consider that in the

mix, when we are making judgments about alterations of, in this case, the exclusionary rule?

Dr. WASSERSTROM. Well, I think it is important to realize that the bill you are talking about of course will only apply in Federal courts, and the Federal courts, there has been an exclusonary rule now for 70 years, for fourth amendment violations.

So there is no reason to think there is more frustration out there now than there has been over the last 70 years. I am talking about FBI agents, other Federal law enforcement agencies like the Drug Enforcement Administration.

What you are saying I think may have more validity with respect to some State and local police forces than it would the Federal police forces.

But even with respect to the States, the exclusionary rule has been in force for 25 years. As I say, it is nothing new. I am sure that it is frustrating for a police officer to find that when he has arrested somebody who is clearly guilty, that the case cannot be prosecuted effectively because evidence has been excluded.

I do not really think it happens very often. My experience, as a defense lawyer, the number of cases where evidence was excluded, or cases were dropped because the evidence would have been inadmissible, there were not many.

The only offenses were the less serious kind of possessory offenses, usually drug possession defenses, small quantities of narcotics, arrested on the street—that kind of thing.

But I am sure it is frustrating for police officers. On the other hand, I am sure half of them that live within the confines of the fourth amendment itself, is sometimes frustrating for police officers.

That is, they cannot search and seize whenever they please. I think the cause of their frustration may, in many cases be, the rules themselves that say when they can search and seize.

That is a different question than the question of whether or not the exclusionary rule should apply when they violate those rules. And it may be that they should be allowed, for example, to search and inventory a car when they make an arrest of the driver. Well, that is a disagreement with interpretation of the California Constitution by the California Supreme Court. That itself I am sure is frustrating to police officers because it hampers law enforcement.

But that is an argument about something different. It is not an argument about whether or not, when they do violate the fourth amendment, the evidence that they obtain should be excluded.

And I just do not think that, at least as far as Federal law enforcement agencies are concerned, there is any reason to think that there is a demoralizing effect from the exclusionary rule. I mean, they have lived with it for 70 years, as I said.

Senator BIDEN. Thank you very much, Professor. I appreciate it.

Our next witness will be Attorney General Jim Smith here of Florida.

Attorney General SMITH. Yes, sir.

Senator BIDEN. Welcome. We appreciate your taking the time and effort to come all the way up.

Were you in Florida this morning?

Attorney General SMITH. Yes, sir, and I apologize for being late. We had fog in Atlanta, and we were about 45 minutes late.

Senator BIDEN. Anybody who has to go through Atlanta has a dispensation, automatically, and that is the only way I know how to get from there to here, just about.

General, I am here to listen to your testimony. Please proceed.

STATEMENT OF JAMES SMITH, ATTORNEY GENERAL, STATE OF FLORIDA, ON BEHALF OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, ACCOMPANIED BY BILL BRYANT, DEPUTY ATTORNEY GENERAL, STATE OF FLORIDA

Attorney General SMITH. Thank you, Mr. Chairman.

I would like to introduce Mr. Bill Bryant who is the deputy attorney general of Florida, who is with me today, and I appreciate the opportunity to be here this morning and discuss a matter of considerable significance to our criminal justice system.

When I appeared before the Senate Judiciary Subcommittee on Criminal Law in March 1982, it was to advocate legislation limiting the judicially created exclusionary rule.

My earlier comments are a matter of record and I will not repeat them this morning. Basically, it was my opinion that the rule had become an obstacle to justice rather than a vehicle for justice.

This issue continues to be of special interest to the National Association of Attorneys General, as well as to the State of Florida.

Along with many other States, Florida faces a very serious crime problem. Our constant battle with drug smuggling and crimes related to drugs greatly intensifies the challenges faced by law enforcement and balloons the statistics that make us a high crime State.

Although Federal, State, and local law enforcement are making record seizures and arrests, they are bailing against the tide.

We must provide law enforcement officers and prosecutors with effective weapons to combat drug smuggling and other crimes that it spawns.

Much of the evidence upon which our prosecutions turn results from search and seizure conducted by law enforcement officers without a warrant in situations that require immediate action.

If we deny to the prosecution the ability to use drugs and other evidence seized, in good faith without a warrant, we seriously impair their ability to put drug smugglers out of business.

Since I last testified on this issue, the Supreme Court has issued two rulings that have helped curb use of the exclusionary rule as a means of withholding probative evidence of crime from our courts.

In two cases, *Massachusetts* v. *Sheppard* and *United States* v. *Leon,* the court held the exclusionary rule will not be applied in cases in which law enforcement officers seized evidence on the basis of a search warrant later found to be technically flawed, or faulty.

Instead, the court held that when a search is undertaken in good faith reliance on a presumably valid warrant issued by a neutral and detached magistrate, the evidence obtained is admissible.

In so holding, the court recognized that the rule's function of curbing police misconduct would not be served by excluding evi-

dence from a search conducted as the result of a judicial error rather than police error.

However, the court cautioned that certain evidence would not be admissible under this good faith exception.

The exception does not apply to evidence seized through a warrant procured by a police officer who knowingly or negligently swears to materially false facts.

Nor does it apply to a warrant issued by a judge or magistrate who abdicates his position of neutrality.

With the implementation of this good faith exception for evidence obtained through search warrants, the battle to right the wrongs permitted by blind reliance on the exclusionary rule was half won.

But the Supreme Court left one question unresolved. It did not address the question of whether the rule applies to evidence obtained without a warrant by police officers who reasonably, but incorrectly, believe they have proper basis for their search.

It appears likely that the court will consider and validate this additional good faith exception in the near future, if I can predict the direction of the recent court rulings.

However, in my view, and because of the continuing drug problem that we have in Florida, the interests of safe, effective law enforcement require that we not wait for the judiciary to rule on this issue.

Adoption of Senator Thurmond's bill would accomplish this needed step much sooner and I urge its passage.

In closing, let me emphasize that I do not advocate the admission of evidence seized without probable cause or in bad faith. We should not ignore irresponsible police behavior by excluding probative evidence, nor should we reward the guilty.

In effect, that is what we do, when we allow the criminal courts to punish responsible police behavior by excluding probative evidence.

What I am suggesting is that we eliminate the all or nothing rationale, and allow admission of evidence seized by an officer acting in good faith with a reasonable belief, supported by objective grounds, that his conduct, or her conduct, was lawful.

The procedural rules guiding our criminal justice system should be a means for eliciting truth and ensuring fair and speedy trials. They should not be used as a means to withhold critical evidence and to frustrate justice. I will be happy to answer your questions.

Senator BIDEN. General, thank you very much. Before we begin, let me compliment you on a totally unrelated matter, on the phenomenal job you are doing under very difficult circumstances in the State of Florida.

Florida seems to have had visited upon it a national problem, and you in fact, and the State of Florida, and you particularly, General, I think you are doing an extremely commendable job in the circumstance that would boggle the minds of most other State attorneys general, and I compliment you.

Attorney General SMITH. Thank you.

Senator BIDEN. General, let me ask you a couple of questions, if I may. First of all, in the *Leon* case, as you know, the court defined with some specificity circumstances under which the good faith ex-

ception would not prevail in a warrant search and they cited four of those circumstances—a tainted magistrate, a warrant that is obviously flawed on its face, et cetera.

Now I assume that you have no objection to those stated——

Attorney General SMITH. No, sir. Not at all.

Senator BIDEN. Now, when you suggest that the Court only went halfway—and it did—I would like to ask you, that if you acknowledge that the exceptions stated to the newly created good faith exception in warrant searches are useful, or helpful, warranted—no pun intended—what do we do in the case of the warrantless searches, where in fact there are no similar guidelines? Should this committee, if it wishes to extend, legislatively, the good faith exception to warrantless searches, in fact define in a manner similar to that which the Supreme Court did in warrant searches, what in fact would not qualify as a good faith exception?

Attorney General SMITH. I think you would agree that it would be very difficult, legislatively, to do that. I would prefer that that be developed through case law, as I am sure it would be.

Senator BIDEN. Now, having said that, it gets me to my third point, and that is——

Attorney General SMITH. I think you are getting into a cliff here.

Senator BIDEN. Well, no, I never trifle with people who are probably going to be governors some day, especially in States that have such significant primary votes. I say that only for Senator Kennedy, I want you to know. I have no interest in anyone else in this committee. But I——

Attorney General SMITH. We have a couple good law schools down there, too.

Senator BIDEN. I have no further questions. [Laughter.].

In the Florida situation—no, let me back up. It is your view, that as it relates to guidelines of what constitutes a good faith and what does not constitute good faith search, warrantless or warrant, that the preferable route is not to attempt to legislate that but to let case law develop to define that. Is that correct?

Attorney General SMITH. Yes.

Senator BIDEN. Now would you rather have, assuming you could get the same result—would you rather have the good faith exception extended to warrantless searches by the Congress or by the Supreme Court, assuming the Supreme Court tomorrow were about to——

Attorney General SMITH. Well, I think the Court, I believe the Court is headed in that direction. Because of the real life problems that we have in Florida today, we—you know—when we lose major drug cases, they are on motions to suppress, usually over the warrant, or, you know, those kinds of problems, and I would like to see the Congress move—you know, we—and I do not want to be dramatic—but we really have a crisis situation in our State.

We have spent—3 years ago, we appropriated—new—$200 million in our State budget for law enforcement. We have had dramatic increases in Federal law enforcement in our State, but during that period of time, the price of cocaine has gone from $60,000 an ounce down to about $15,000 or $20,000. The quality of it has gone up. You know, it is inundating our high schools. You know, we really need help, and I think Congress acting here would help us.

Senator BIDEN. Let's speak to that for a second because that is the point. We have a tendency—not you—we, in the Congress, have a tendency to see a problem, attempt to solve it, initiate an effort and pass legislation to, quote, solve the problem, and after reflection, observe that our solution has little impact upon the real problem.

For example, we spent years and years talking about street crime, and we had a lot of people up here, and both parties declaring war on crime, until somebody finally pointed out, by the way, 96 percent of all that street crime, there is nothing the Federal Government can do to impact on it.

All of a sudden, Federal officials stop running on the issue of, "Elect me Senator to stop rape in the parking lot." And so what we are doing here as—I am a little worried that the Attorney General, or the representative of the attorney general, Mr. Trott, and you General, and many, many others, my own attorney general—I mean all across America—have real serious problems in their States.

And my question is, assuming we pass this law, what impact could it have in the State of Florida? Because in all those cases in the State court, as I understand it, they are still going to be applying a Florida law, an interpretation of the Florida Constitution, right?

Attorney General SMITH. Well, but under our State constitution we follow whatever the Federal standard is in this area.

Senator BIDEN. Well, you mean to tell me that if we, legislatively, change the standard, that that amends your constitution?

Attorney General SMITH. We follow whatever the Federal standard is and that can change, and we passed that constitutional amendment before some of these, you know, U.S. Supreme Court cases came out, with a hope that there would be a change in Federal law.

Senator BIDEN. Well, I will not badger you on that point right now.

Attorney General SMITH. I mean, we have a moving standard in that area. We follow Federal law.

Senator BIDEN. You mean the courts have determined by case law they will follow it, or, there is something written in the constitution of the State of Florida?

Attorney General SMITH. I cannot recall the precise language, but basically, our State constitution says we follow whatever the Federal standard is.

Senator BIDEN. Well, I would appreciate it—and I will not pursue the matter with you now—but I would appreciate it if you would have your staff, one of your assistants——

Attorney General SMITH. We would be happy to. And frankly, we did that as a result of, you know, some Florida supreme court decisions that were really more limiting in this area, you know, than the Federal, and we felt—usually, you know, you feel like you are safer with your State courts. We felt like we might be in better shape with Federal courts and so we——

Senator BIDEN. Well, General, again, I do not want to pursue it, it is catching you a little offguard here on this, but I would appreciate it if you would have your staff submit, in writing——

Attorney General SMITH. Sure.

Senator BIDEN [continuing]. An answer to the question of whether or not the Florida Constitution calls for following the Federal constitutional standard, or the Federal statutory standard, which are two different items. Because if in fact it is the latter—and I do not know enough to know that it is—but if it were the latter, I think you would have to admit, then, that what we do here, notwithstanding what the objective is, and what your real problem is, we would not have had much impact.

Now, if in fact your constitution, which is—I guess it would be somewhat exceptional in this regard—if it were to follow Federal statutory language, which in effect means that the Congress can amend the Florida State Constitution, then I would say that we would be, quote, "helping you", from your perspective. But having said that, let me move to the next point.

Attorney General SMITH. But to answer the question we started out on, I mean, I certainly could not sit here and say that passage of this legislation, you know, would dramatically reduce the crime rate in the State of Florida. That would be naive.

Senator BIDEN. No, and by the way, I know you are not attempting to say that, but I would assume that one of your hopes is that it would in fact dramatically reduce the number of cases where evidence is suppressed because of what you believe to be good faith initiations by police officers in your State, which in fact, unfortunately, do not comport wth the Court's interpretation of what is tbe proper application of the fourth amendment.

Let me just move on. I know you are a busy man and you have many places that you must go, and I appreciate your coming up here.

But let me get to the last point. I am very concerned that if in fact we are correct—if in fact I am correct—that it would be better for all concerned, even those who strongly support amending the exclusionary rule, for the Supreme Court to do that, in the area of warrantless searches, then, I think we are moving somewhat prematurely, because it would seem to me that it is better to do the following. And I would just like you to comment on this and then I will stop. If anything, we should codify the Supreme Court's decision on warrant searches, and move on the Tort Claims Act, and wait for the Supreme Court to go in the direction that you and I, and everybody believes they are moving, including the Justice Department, under what circumstances a good faith exception would prevail in warrantless searches.

That seems to me to be a more prudent and reasonable way to go because the urgency, at the Federal level, to the extent that it exists, is somewhat miniscule compared to the extent that there is an urgency that exists at a State level, which in fact we, from a statutory standpoint, could not impact on anyway.

That is somewhat my emerging position, if you will. I would like you just to comment on why you would disagree with it, if you do.

Attorney General SMITH. My response would be that if there were a real, you know, a major concern that this legislation would trample on the fourth amendment, then I would say we should wait on the Court. The previous witness gave the opinion that the

legislation, he felt would be, you know, declared unconstitutional in that sense.

I think the Congress really has the responsibility to set policy and not wait on the Court. I think in areas of constitutional interpretation, that should be a matter for them and not the Congress.

Senator BIDEN. I appreciate it, General. Let me just say in conclusion, that just as I think most of us would agree, that the Court would have made a mistake if it just said nothing more than good faith was necessary in the *Leon* case, and, if it failed to go on and cite guidelines, as it did at a minimum, in the four instances they cited—just as we would have sat here and said that the Court should have said more, it seems to me that we should act as responsibly as the Court is acting.

And that if we are going to put in a good faith exception, we had better do as the Court did, and do what we all acknowledge to be a very difficult thing, as it was for the Court, and that is, to define circumstances under which there is not good faith.

We have never, in our law, allowed a stupid person's interpretation of an existing principle in our constitutional law and/or statutory law, to rise to the level of being treated with respect within the courts, regardless of how much good faith that not-so-right person had.

Attorney General SMITH. Right.

Senator BIDEN. It is not part of our English jurisprudential system to reward stupidity, and so I am worried that if we all agree, and that there seems to me a mounting—mounting, that is an exaggeration—there seems to be, at least this morning, some consensus that the Court acted wisely in *Leon.* We should do at least as the Court does, and not do what the Court did not do, and that is, just have a blanket good faith exception.

I sincerely appreciate your time and your effort, and your suggestion of Florida law school. He is not even in college yet so——

Attorney General SMITH. It is warmer there, so——

Senator BIDEN. Thank you very much.

Attorney General SMITH. Thank you very much, Mr. Chairman. I appreciate it.

[Responses to questions follow:]

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32304

JIM SMITH
Attorney General
State of Florida

October 9, 1985

Honorable Joseph R. Biden
United States Senator
SR-489
Washington, D.C. 20510

Dear Senator Biden:

At the Senate Judiciary Committee's October 2 hearing, I recommended that the "warrantless" version of the good faith exception to the exclusionary rule be adopted through passage of Senate Bill 237, introduced by Senator Strom Thurmond.

You asked during the hearing that I provide a written response on the following questions:

1. Why not wait until the United States Supreme Court extends the good faith exception to non-warrant cases?

2. What effect would a change in federal statutory or case law have on Florida in light of the 1983 amendment to the search and seizure section of the state's constitution?

In answer to your first question, I believe that the interest of safe and effective law enforcement requires that legislative action be taken to promptly extend the good faith exception to non-warrant searches and seizures.

In the absence of legislation, we can only hope that the Supreme Court will, in fact, decide the issue in a forthcoming case. It is my view that this places a critical evidence-gathering function in limbo for an uncertain period of time, and continues to have a chilling effect on reasonable and proper searches and seizures by police officers.

It is true that at one time the Supreme Court apparently intended to address the non-warrant version of the good faith exception, judging from the fact that it agreed to review the decision of **People v. Quintero**, 657 P.2d 948 (Colo. 1983), cert. granted, 462 U.S. ____, 77 L.Ed.2d 1386 (1983), wherein the Colorado Supreme Court had rejected the applicability of this doctrine. However, before that case could be resolved, the defendant died, requiring a dismissal of certiorari, pursuant to the court's long-standing policy against issuing advisory opinions.

In addition to the uncertainty of a court decision on this issue, there is another reason for legislative action. Action by Congress will affirmatively state the policy of the United States on this issue, providing a clear basis for future judicial interpretation. I believe this approach is far more desirable from a legal standpoint, and would lend the weight of law to a judicially-adopted policy.

Florida has a special interest in seeing the Thurmond bill passed because our constitution requires that state courts determine the admissibility of evidence obtained in police searches on the basis of United States Supreme Court interpretations. Article I, Section 12 of the Florida Constitution, reads as follows:

> Section 12 Search and seizures.--The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. **This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.** [Emphasis Added]

This section explicitly provides that Florida's state courts may not afford greater protection from searches and seizures than those afforded by the United States Supreme Court in construing the Fourth Amendment to the federal constitution. Thus, if Senator Thurmond's bill becomes law and our nation's highest court finds its adoption of the "warrantless" version of the good faith exception consistent with Fourth Amendment principles, this will become the law in Florida as well. In my opinion, that result will be expedited if S. 237 becomes law.

I appreciated the opportunity to appear before the committee last week to testify on this issue, and hope my comments are helpful. If you need further information, please let me know.

Sincerely,

Attorney General

JS/pac

Senator BIDEN. Prof. William Greenhalgh of the American Bar Association, and Mr. Tony Califa, legislative counsel, American Civil Liberties Union.

Dr. GREENHALGH. American Criminal Lobby I believe that the ACL——

Senator BIDEN. The American Criminal Lobby?

Dr. GREENHALGH. That is what the attorney general said about my colleague on my right. He has not gotten quite to the ABA yet.

Senator BIDEN. That is true. That is the same guy that moved on Presser and Hutton, and all those people.

Dr. GREENHALGH. That is why I want to welcome you as the fifth in seniority at Georgetown Law Center, because you will be our distinguished Ryan Lecturer on the evening of November 6 at 8:15 p.m.

Senator BIDEN. I wish you would invite Mr. Meese to be there with me because I am going to be speaking a lot about him, and about the Justice Department's——

Dr. GREENHALGH. Anyway, I might be able to help you with your son.

Senator BIDEN. I just hope he can get through college. [Laughter.]

By the way I hope you are noting the laughter. [Laughter.]

All right, gentlemen, proceed in any order that you think is most appropriate.

STATEMENT OF A PANEL CONSISTING OF WILLIAM W. GREENHALGH, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW SCHOOL, ON BEHALF OF THE AMERICAN BAR ASSOCIATION; AND TONY CALIFA, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Dr. GREENHALGH. Senator, let me make a few observations on my colleague, Brother Trott, from west of the Mississippi.

I have been teaching the fourth amendment for 28 years, 5 years as an assistant U.S. attorney, where I lectured the metropolitan police department of this city, the detective bureau, with regard to certain decisions that came down between 1958 and 1963.

That was the zenith of the so-called Warren court. Such cases as how to work within the frame of *Miller, Giordenello, Henry, Silverman, Chapman,* and of course one of the most important was *Wong Sun,* which was decided in the winter of 1963.

It was my duty and responsibility to go to these detectives and try to work within these decisions, in order that they would go out, and secure search warrants. We are talking about 1958 to 1963. We are not talking about 1985, you know, post *Leon* on that.

Senator BIDEN. Yes.

Dr. GREENHALGH. And it seems to me that if you can do that at that stage with the hot breath of the Warren court coming down on law enforcement from a Federal point of view, you certainly ought to be able to do it in 1985.

Second, I was consulted in the *Quintero* case to assist the public defender office of the State of Colorado in writing the brief for the Supreme Court in that matter.

I would like to say that the reason as to the motion to suppress, that the trial court had granted, and which was affirmed by the Colorado Supreme Court was, that when Ms. Berger said that there was somebody suspicious, she never told them exactly what he was doing until after he was arrested.

In other words, there was no information upon which that officer could, at that time, establish probable cause, until after he was not free to go.

Second, Senator—and this is something Mr. Trott forgot to tell you—would you believe, that the Colorado Legislature had passed a good faith statute——

Senator BIDEN. That was in existence at the time?

Dr. GREENHALGH. In existence at the time, which was rejected by the highest court of that State. I suggest to those staffers back there that are interested in this, they may want to pull the *Pacific 2nd* decision of the Colorado Supreme Court, written by Chief Justice Ericson, as to the reasons why they did not buy the good faith statute under the facts of that case.

Senator BIDEN. Let me make sure I understand. The court rejected as being unconstitutional the good faith exception?

Dr. GREENHALGH. No. They did not reject it as unconstitutional. They said it does not apply under the facts of this case.

Senator BIDEN. Got you. OK.

Dr. GREENHALGH. But anyway there was—there are not many of these "cats" hanging around. You know, there are a lot of—I mean, Arizona I think has gone overboard with regard to a good faith exception on a statute, and maybe one or two others. But anyway, Colorado was in the pipeline as such.

Senator BIDEN. Got you.

Dr. GREENHALGH. Second, the staffers behind you might be interested in pulling a case called *United States* v. *Gant,* G-a-n-t, cited at 759 Fed. 2d, 484, fifth circuit, 1985, decided as of May 6.

Senator BIDEN. Did you have any of these, staffers?

Dr. GREENHALGH. I do not know. They keep yawning back there. I just want to try to keep them awake.

Senator BIDEN. You have one. I am not sure how many more.

Dr. GREENHALGH. I do not know who they are.

Senator BIDEN. All right. I just wondered.

Dr. GREENHALGH. Anyway, the *Gant* case, Senator, I suggest to you is an excellent explication of the four exceptions which you, shall we say, fortunately, have been dwelling on this morning, in its interpretation of whether suppression is still an appropriate remedy.

It was written by the chief judge of the fifth circuit along with Judge Goldberg and Judge Tate. It is a real good case to explain exactly what *Leon* decided and interpreted, and the fact that those, one of those, any of those, any one of those criteria is not met, then suppression is still an appropriate remedy.

I think the most important thing that we are getting to here is, is this legislation necessary? That has come through loud and clear this morning.

It is the American Bar Association's position that it is not, for the simple reason that we ask the Congress to wait, because we

knew that the Supreme Court would be working its will with regard to the *Leon* and *Sheppard* cases.

Now that those cases have been decided, it seems to me that we should wait, once again, as to whether or not they are going to grant a writ of certiorari dealing with warrantless seizures on public space.

Senator BIDEN. What is your considered opinion on the likelihood of that?

Dr. GREENHALGH. They have been dormant in this area for 14 months. Next Monday, they may, you know, grant a writ, because that is the first Monday in October.

They denied a writ of certiorari in a case called *United States* v. *Morgan* last year, where, as I recall, there were three Justices that were interested in the subject matter but they did not get a fourth vote.

Frankly, Senator, based on my knowledge of the some 240 cases dealing with the fourth amendment since 1914, I think they are waiting for the dust to settle a little bit, for the circuits to work their will in the Federal arena, with regard to cases like *Gant,* and, then also, to see what some of the State supreme courts are going to do.

In relation to those four exceptions, Senator, three of those exceptions are easy for interpretation, dealing with warrantless seizure. One is not, and that is the neutrality and detachment of the magistrate.

In a warrantless situation, first of all, you have no affidavit by which you can attack, as far as a motion to suppress is concerned.

Second, all you are going to have is the testimony of the officer, what he saw and observed, or what information he received, you know, from third parties, on that.

The whole history of the exclusionary rule has always been that all searches and seizures are per se unreasonable without judicial authorization, except for, right now, nine carefully defined exceptions to that. The whole idea of the warrant clause, which has been described in the Constitution, as interpreted by the Supreme Court, is the neutral and detached magistrate—you know—interposing his authority between the policeman, and you and I, as citizens of this country.

There is no way that a police officer, State, Federal, or local, is neutral and detached. So, in writing this opinion, I suggest to you that Justice White has written himself into some sort of a box which he is going to have a very difficult time, if he is going to use this rationale—you know—for a warrantless seizure situation. I do not see that coming.

That is not to say they can write something else. They can loosen that particular exception in some way or do something else along that line. But as of now, neutrality and detachment does not enter a police officer's mind because that is his job, to be suspicious, to have probable cause, to go out and make arrests, and then perform the subsequent searches and seizures. So, I do not see that.

So when you talk about writing these four exceptions in there——

Senator BIDEN. Well, I was trying to make the point.

Dr. GREENHALGH. I understand, I understand that, but I seriously question the neutrality and detachment argument that Justice White said in part III C of that opinion. The other thing I would like to bring to the attention of the committee: For 107 years, since 1878, good faith has never been the test. It has always been probable cause.

We go back to a bunch of civil cases, *Stacey* v. *Emory,* which was a civil suit for damages because an income tax collector went a little "bananas" and seized something, and as a result he was sued.

And the allegation was, "Well, he was malicious." The Supreme Court at that time, in 1878, said motive is not important; the only thing that is important is whether that officer had probably cause.

You bring that down to 1923, *Director General of the Railroads* v. *Kastenbaum.* Same argument. Probable cause is the test, not good faith.

One of the leading cases, the first exception carved out by the warrant clause in 1925 was *Carroll* v. *United States.* Same argument; the test is probable cause.

Take it on further, the *Henry* case in 1959; *Beck* v. *Ohio* in 1964; all the way forward. Good faith has never been the test. It has always been probable cause.

Senator BIDEN. If I can interrupt you there for a second. One of the reasons for the confusion—I think it exists among some of my colleagues and it is a bit presumptuous for me to suggest whether or not anyone is confused, but I think they confuse probable cause with good faith.

Because some who do not spend time on this committee or on this issue—which in the overall scope of the problems this country faces, is not the preeminent problem we should be dealing with, or are dealing with—they make the following kind of argument: that a police officer who has a warrant in his hand that is flawed, had probable cause to believe he could knock the door down.

And the police officer who was told by so and so that such and such was happening, even though it turned out to be a violation of the fourth amendment, had probable cause because he acted in good faith.

Do you understand what I am trying to say?

Dr. GREENHALGH. Yes.

Senator BIDEN. For those who do not think of it in purely legalistic terms, the actual person out there thinks probable cause is the same as good faith.

It has never been easy, as you know better than anyone, probably, in this room, in light of the amount of time you have spent in dealing with the fourth amendment, and I am not being solicitous, I am being serious—defending the fourth amendment or the fifth amendment.

When I first got here in 1974, if I am not mistaken, and I believe this to be accurate, there was a petition being circulated in the Capitol trying to get Senators and Congresspersons to sign a petition that reworded the Bill of Rights, but had the same principles, but just used it in, quote, "common everyday language."

They only could get something like 30 Members of the House and Senate to sign it, because it is pretty radical stuff in the minds of folks out there.

When you talk about the fourth amendment, or you talk about the fifth amendment, they say, well, you are guilty or you are not guilty. But what our Founding Fathers understood better than anyone, was that the constitution in part defends against the natural inclinations of men, as much as anything else.

And so the reason I raise it is that you will hear—and I am sure it must be frustrating to you—people, who otherwise should know, interchanging the phrase "probable cause" with "good faith," and I think that is part of the confusion, and I wish I could figure out how, and succinctly, to make that distinction.

Dr. GREENHALGH. I strongly suggest to you, because of your zeal and interest in this matter, if you do trace these cases, of *Stacy* v. *Emery,* in 1878, *Director General of the Railraods*—which was a war case that was decided in 1923—v. *Kastenbaum, Carroll* v. *United States,* 1925, Henry in 1959, and *Beck* v. *Ohio* in 1964,[1] you will see the thread going all throughout our history, and all of these cases were warrantless situations, none dealing with warrants.

The Supreme Court, consistently, for 107 years, which is some precedent, even with this Court, some precedent, that good faith has never been the test, it has always been probable cause.

It is difficult, I agree with you, to try to persuade people that that is what the law has been for such a long period of time.

Now, when you have *Leon* and *Sheppard,* and the Court—and this is based on Justice White's concurring opinion in *Illinois* v. *Gates* which was decided a year before, he wrote in effect 80 percent of his opinion in *Gates,* for *Leon,* you know, the year before. There is no question about that.

Still, the important thing is, you are dealing, as you suggest, 96 percent of law enforcement is on a State level as opposed to the Federal, and we are talking about warrantless situations, for the most part on public space. We are not talking about warrants, for search warrants going into houses, or things like that. That is why it is so important to try to make them understand that we still have—and every single one of the Supreme Court Justices, including Justice Rehnquist and Justice O'Connor have written in their opinions—you know—as far as we are concerned, all searches and seizures without judicial authorization are per se unreasonable except for these exceptions.

And what I think is—if they mean what they say, then the warrant clause still exists, but the unfortunate thing is the attack, the frontal attack on the warrant clause itself, and this is part of that process which you suggest.

Senator BIDEN. Thank you, Professor.

[Prepared statement follows:]

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[1] *Stacey v. Emery,* 97 U.S. 642 (1878); *Director General of Railroads v. Kastenbaum,* 263 U.S. 25 (1923); *Carroll et al. v. United States,* 267 U.S. 132 (1925); *Henry v. United States,* 361 U.S. (1959); *Beck v. Ohio,* 379 U.S. 89 (1964).

STATEMENT

of

PROFESSOR WILLIAM W. GREENHALGH

on behalf of the

AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Committee:

The American Bar Association is pleased to appear before you to express our views on the subject of S. 237, legislation which would limit the application of the Fourth Amendment exclusionary rule. My name is William W. Greenhalgh. As a former Chairperson of the ABA Criminal Justice Section, I have been designated by ABA President William W. Falsgraf to represent the Association.

My own background in the criminal justice area has included both prosecution and defense experience. I am presently a clinical professor of law at Georgetown University Law Center and have been Director of the E. Barrett Prettyman Program (L.L.M. in Trial Advocacy) since 1963. That program has represented over 2,000 indigents charged with felony offenses in the various courts of the District of Columbia. It has produced, among others, a book entitled, "Law and Tactics in Exclusionary Hearings" (Coiner Publications, 1969).

Before going to Georgetown, I worked as a staff attorney with the Justice Department's Internal Security Division, and served in the U.S. Attorney's Office in Washington, ending my tenure as Chief Assistant U.S. Attorney for the District of Columbia, General Sessions Division.

Just as the American Bar Association is, of course, reflective of the legal profession as a whole, so, I should note, is the Section of Criminal Justice representative of all segments of the criminal justice system. The Section is

neither the voice of the defense bar nor the prosecution. Our members include prosecutors, criminal defense lawyers, public defenders, judges, law professors and law enforcement officials. We try to reflect that balanced view in policy positions which we adopt.

ABA POSITION SUPPORTS EXCLUSIONARY RULE

The American Bar Association has long supported retention of the Fourth Amendment exclusionary rule in state and federal criminal proceedings. We continue to do so, and urge this Committee to approach this issue cautiously -- and reject proposals to limit the application of the rule further in criminal trial proceedings. Despite the assumption of critics today, its abolition will not stem the tide of crime in our country -- but tampering with it will destroy a portion of the cherished constitutional fabric of which our system is constructed.

To say that the federal exclusionary rule has not worked is to ignore experience. It has contributed to substantial law reform by federal authorities. It has increased the professionalism of federal law enforcement officers. It has vastly enhanced the integrity of the federal judicial process.

Very importantly, empirical evidence reveals that the operation of the rule has not greatly affected case dispositions. The overwhelming percentage of guilty pleas and convictions in federal courts provides ample proof that the rule has not stultified either federal law enforcement or the judiciary.

There are four principal reasons why we believe action on S. 237 or similar legislation is unwise at this time -- or that, at a minimum, the legislation needs to be carefully considered in light of the impact of the U.S. Supreme Court's July, 1984 decisions in U.S. v. Leon, 104 S. Ct. 3405 and Massachusetts v. Sheppard, 104 S. Ct. 3424, both decided July 5, 1984. I will explore each of these in turn:

1. S. 237's present language would sweep away four exceptions where the supreme court in Leon declared that suppression is still appropriate.

2. Extension of the good faith test to warrantless situations represents a major leap beyond Leon.

3. More recent and comprehensive empirical evidence raises doubts about the true impact of the rule in criminal cases.

4. Results from the U.S. Department of Justice study now underway to analyze the practical impacts of Leon should be reviewed beofre a broader exception is considered.

S. 237's PRESENT LANGUAGE WOULD SWEEP AWAY FOUR EXCEPTIONS WHERE THE SUPREME COURT IN LEON DECLARED THAT SUPPRESSION IS STILL APPROPRIATE.

Any discussion of a good faith exception to the exclusionary rule must, of course, begin with the U.S. Supreme Court's decisions in Leon and Sheppard. These cases carved out a limited good faith exception in warrant cases. Specifically, the Court held that the exclusionary rule does not bar the use of evidence obtained in violation of the Fourth Amendment if the police acted in objective good faith reliance on a warrant that later proved to be defective. The Leon Court, however, stated that suppression is still an appropriate remedy if one of four factors is present:

1. that the magistrate is not neutral and detached;
2. that the magistrate or judge in issuing a warrant was either intentionally or recklessly misled by information contained in an affidavit;

3. that the officer relied on a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable" (Brown v. Illinois, 422 U.S. 590, 610-11 (1975));

4. or a warrant is so facially deficient (i.e., in failing to particularize the place to be searched or things to be seized) that the executing officers cannot reasonably presume it to be valid. Id., 104 S. Ct. at 3421-22.

Yet S. 237 would sweep away these limitations. S. 237 provides in part that, "A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable good faith belief, unless the warrant was obtained through intentional and material misrepresentation."

S. 237 would thus substitute a lesser standard for assessing objective good faith than that established by the Supreme Court in Leon. This proposed language in the bill is, therefore, at best a poor policy judgment flying in the face of the Court's majority opinion; and, at worst, may be unconstitutional.

EXTENSION OF THE GOOD FAITH TEST TO WARRANTLESS SITUATIONS REPRESENTS A MAJOR LEAP BEYOND LEON.

An overriding reason it is not desirable to extend the good faith warrant exception to warrantless searches is that this expansion would negate a desirable consequence of the Leon and Sheppard decisions: if the good faith exception is limited only to seizures conducted pursuant to a warrant, the police will have an additional incentive to obtain a warrant. And as the Court stated in Leon:

> Because a search warrant "provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment

> of a law enforcement officer 'engaged in the often competitive enterprise of ferreting out crime," United States v. Chadwick, 433 U.S. 1, 9 (1971) (quoting Johnson v. United States, 333 U.S. 10, 14 (1948), we have expressed a strong preference for warrants and declared that "in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fail." Id., at 104 S. Ct. at 3417.

Note 13 of Leon is critically important, for it states that "nothing in this opinion is intended to suggest a lowering of the probable cause standard." 104 S. Ct. at 3417, n. 13. An arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause--and substitutes instead a far less reliable procedure of an after-the-event justification for the arrest or search. This method is too likely to be subtly influenced by the familiar shortcomings of hindsight judgment. Beck v. Ohio, 379 U.S. 89, 96 (1984).

Let me proceed now to analyze whether Leon and Sheppard are workable precedents for good faith warrantless searches and seizures. Until these cases were decided, there was no Court precedent for a good faith exception to the rule. The key to the fact that the Court will be reluctant to extend the good faith exception to warrantless searches is evident in its rationale in Part III C of the Leon decision.

Let us compare a facially deficient warrant (i.e., in failing to particularize the place to be searched or the things to be seized) to a factual situation where the description of alleged criminal activity is so vague and amorphous that it amounts to mere suspicion, which traditionally has been insufficient to justify a warrantless seizure. Wong Sun v. United States, 371 U.S. 471 (1963). Citizens ought not to be deprived of personal liberty upon an allegation which, upon being sifted, may amount to nothing more than a suspicion, the Court has said. Rice v. Ames , 180 U.S. 371, 374 (1901).

Regarding the so-called "untouched probable cause standard," the test would undoubtedly be the same. No officer could manifest objective good faith, whether relying on a warrant based on an affidavit, or making a warrantless arrest,

so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. The Court cites Justice Powell's concurrence in Brown v. Illinois, 422 U.S. 590, 611 (1975). This would appear to satisfy the first of the three Brown criteria enumerating flagrantly abusive violations of Fourth Amendment rights. The others are that the arrest was effectuated as a pretext for collateral objectives or the arrest was unnecessarily intrusive on personal privacy. By failing to include the latter two, the Court apparently concedes that these violations of the Fourth Amendment would be inapplicable to warrant situations.

On the other hand, under warrantless circumstances, the violations can become crucial, especially in a more insidious way, such as a pretext arrest, United States v. Lefkowitz, 285 U.S. 452, 467 (1932); See also Gustafson v. Florida, 414 U.S. 260 (1973) (Stewart J. concurring), or by an infamous method, as with a stomach pump. Rochin v. California, 342 U.S. 165 (1952).

A third factor to be tested as to whether suppression is an appropriate remedy is discussed in Franks v. Delaware, 438 U.S. 154 (1978). In that case, the Court held that the evidence seized predicated on a search warrant affidavit, which had been shown to contain intentional or reckless material misstatements, should be suppressed. It is somewhat doubtful that the Franks rationale laid down in Leon can be used to apply in a warrantless situation. First, there is no affidavit upon which either deliberate or reckless falsehoods used to obtain a warrant can be tested. Secondly, there is no magistrate to be misled. (This is one of the central themes running through the entire Leon case). Instead it is the judge, at a suppression hearing, who will consider the demeanor, behavior, accuracy, motive, and prejudice of the witness, in weighing credibility; he alone will make the determination that the witness is neither committing perjury

nor making statements with reckless disregard for the truth. A conscientious motions judge might detect perjury, but the Court has offered no guidance as to what constitutes a reckless disregard for truth in Fourth Amendment cases. United States v. Davis, 617 F.2d 677, 694 (D.C. Cir. 1979). However, no matter what, there must be an appropriately objective definition of recklessness to be consistent with Leon.

The last of the criteria laid down in Leon, and by far the least analogous to warrantless situations, is the lack of neutrality and detachment of the seizing officer. If a magistrate cannot be financially interested, Connally v. Georgia, 429 U.S. 245 (1977), nor act as an adjunct law enforcement officer, Lo-Ji Sales v. New York, 442 U.S. 319, 326-27 (1970) , not be a chief investigator and prosecutor, Coolidge, v. New Hampshire, 403 U.S. 443, 451 (1971), then a law enforcement officer "while acting under the excitement that attends the capture of persons accused of crime," Lefkowitz, 285 U.S. at 464, cannot be considered neutral and detached.

NEW EMPIRICAL EVIDENCE.

Opponents of the exclusionary rule and many citizens believe the rule results in legions of criminals going free on "technicalities." Evidence from available studies strongly suggests otherwise.

A major review of research on the effects of the rule -- cited by the majority in Leon -- has been issued since the last Senate hearings held on this legislation. Thomas Y. Davies' lengthy study published in 1983 by the American Bar Foundation, A Hard Look at What We Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule, concluded that the "costs" of the exclusionary rule -- in terms of dropped prosecutions and lost convictions -- are actually low. Davies' research disclosed that the federal government study of the effects of the rule conducted by the National Institute of Justice (NIJ) in 1982 were misleading and exaggerated. The NIJ study had

claimed that the rule was a "major" factor in lost prosecutions. Specifically, Davies found that --

- o The cumulative loss -- nonprosecution or nonconviction -- resulting from illegal searches is in the range of 0.6% to 2.35% of all adult felony arrests.
- o In felony arrests for offenses other than drugs or weapons possession, the cumulative loss is in the range of 0.3% to 0.7% of such arrests.
- o The cumulative loss due to nonprosecution or nonconviction of those arrested on felony drug charge is likely in the range of 2.8% to 7.1%.
- o Less than 1% of individuals arrested for felonies are released because of illegal searches and seizures at the preliminary hearing or after trial.

Prior studies by the General Accounting Office* and the Institute for Law and Social Research** present a fairly consistent picture of the limited impact of the exclusionary rule on felony case dispositions.

Under these circumstances, to the effort to nullify or severely limit the exclusionary rule necessary? Would its

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* Report of Comptroller General of the United States, Impact of the Exclusinary Rule on Federal Criminal Prosecutions Rep. No. CDG-79-45 (Apr. 19, 1979)

** Brian Forst, Judith Lucianovic and Sarah J. Cox, What Happens After Arrest? A Court Perspective of Policy Operations in the District of Columbia, PROMIS Research Projet Publication 4 (Washington, D.C.: Institute for Law and Social Research, 1977); Kathleen B. Brosi, A Cross City Comparison of Felony Cases Processing (Washington, D.C.: Institute for Law and Social Research (Research, 1979).

abolition result in many more cases being pursued? The data do not suggest so.

AWAIT STUDY RESULTS

The U.S. Department of Justice, through the National Institute of Justice, now has a major study underway looking at the impact of Leon on police behavior and training practices.

Until results of this study of the Court's initial "good faith" steps are available next year, action on the pending legislation is premature.

ANY EXTENSION OF THE GOOD FAITH EXCEPTION SHOULD BE LEFT TO THE SUPREME COURT

The U.S. Supreme Court has had a number of opportunities in the fourteen months since the Leon and Sheppard decisions to grant certiorari in a case where the rule might be extended to warrantless searches. It is reasonable to conclude that the Court is giving the Circuits sufficient time to apply the new good faith exception in particular cases, and that the appropriate case or cases will be working their way up to the Supreme Court for its consideration in the coming year.

Given the Court's long-standing expressed "strong preference" for warrants, reemphasized in Leon, it is very clear the Court will weigh very carefully extension of the good faith exception to warrantless searches involving the "hurried judgment" of a police officer. It is no criticism to observe that it is not in the nature of a law enforcement officer to be neutral and detached.

CONCLUSION

Despite asserted claims, there is no demonstrated connection between our national crime rate and the existence of the exclusionary rule; the empirical evidence demonstrates that critics have overstated the adverse effects associated with the rule.

Further, it is clear that the Court was willing to create a good faith exception in Leon because of their confidence in the integrity of the magistrate review process.

The American Bar Association joins with the Administration, Congress and the public in recognizing the need to undertake concerted and effective steps to combat crime. But we believe expanding the good faith warrant exception to warrantless situations would be an unjustified expansion of this narrow exception. Constitutional issues aside, Congressional changes in the rule will undercut law enforcement professionalism, engender decades of litigation over various new tests, and result in very few additional criminals ending up behind bars.

Mr. Chairman, on behalf of the American Bar Association, I would like to thank you and the Committee for inviting us to present these views. I would be pleased to answer any questions you or members of the Committee might have.

STATEMENT OF TONY CALIFA

Mr. CALIFA. Thank you, Mr. Chairman. On behalf of the ACLU with over 250,000 members dedicated to preserving the constitutional freedoms that we all benefit from, we would like to commend you for having these hearings today.

I will be submitting a written statement on the ACLU's strong opposition to S. 237. In my oral remarks I would like to briefly highlight some of the points that I will bring up in the written statement.

We believe that S. 237——

Senator BIDEN. Professor, if you could—unless you have——

Dr. GREENHALGH. I have got nowhere to go.

Senator BIDEN. Good. I would like to ask a few more questions when the testimony is concluded.

Mr. CALIFA. I will be brief.

Senator BIDEN. Take your time. I want to hear what you have to say.

Mr. CALIFA. Thank you, sir.

The ACLU believes that S. 237 is undesirable and possibly unconstitutional legislation. It creates more problems than it solves.

The Supreme Court has been extremely active in the fourth amendment area, and there is no need for the Congress to pass this legislation at this time.

The fourth amendment, adopted as part of the Bill of Rights guarantees Americans the right to be free from unreasonable searches and seizures. To obtain a search warrant, the fourth amendment requires probable cause, supported by oath or affirmation, and specifically describing the place to be searched, or the person or things to be seized.

Since at least 1914, evidence gathered in violation of the fourth amendment has been excluded. It could not be presented in a Fed-

eral prosectuor's case in chief. Since *Mapp* v. *Ohio* in 1961, constitutionally tainted evidence could not be presented in a State prosecutor's case in chief.

Recently, there has been an alarming erosion of the fourth amendment's protections. As Mr. Justice Stewart points out in his 1983 Columbia Law Review article on the exclusionary rule, there are two ways to undermine the rule.

First, by weakening the protections provided by the fourth amendment, and second, by narrowing the circumstances under which the exclusionary rule applies.

The Supreme Court has used both methods quite frequently in the past 15 years. The Supreme Court's efforts in the area of governing search and seizure has allowed police and prosecutors to gauge with increasing certainty their diminished fourth amendment responsibilities. By simplifying the area of the fourth amendment over this 15-year period, the Court has expanded the range of permissible police activity, and drastically reduced the need for a good faith exception.

For example, *Terry* v. *Ohio* upheld street stops and defensive frisks on less than a probable cause. In *Schneckcloth* v. *Busamonte,* an expansive definition of consent searches was adopted.

United States v. *Robinson* gave police broad power to search incident to a lawful arrest. In a case that was handed down last year, *New Jersey* v. *TLO,* a school official's warrantless search of a student was allowed.

And we have many more examples of cases diminishing fourth amendment rights. *United States* v. *Colandro* where the grand jury process was exempted from the exclusionary rule. *Stone* v. *Powell* which severely limited Federal habeas corpus relief on search and seizure grounds.

So the point of this is that the Court has been steadily eroding the areas to which the fourth amendment applies. In the crucial area of probable cause, the Supreme Court, in *Illinois* v. *Gates,* permitted probable cause to be found on the basis of an anonymous informant's tip, so long as the, quote, "totality of the circumstances," end quote, gave rise to a commonsense determination that there is a fair probability of criminal activity. This is a very flexible test, given the extremely generous reading given to law enforcement concerns by the Court during the last 15 years.

All of this put together makes the recognition of a subjective good-faith defense, which is contained in S. 237, both unnecessary and potentially dangerous.

Given the flexibility of the probable cause standard, the introduction of a subjective good-faith defense is merely an invitation to water down the fourth amendment probably cause standard even further.

This is especially true, given the decisions in *Leon* and *Sheppard,* which the Senator and Professor Greenhalgh have so ably examined.

There, an objective good-faith exception to the exclusionary rule was created. Those cases dealt with reliance by officers on a neutral magistrate's search warrant in gathering evidence, and the Court said that that evidence was admissible even if the warrant was deficient and did not conform to the fourth amendment.

We do not think that *Leon* and *Sheppard* were decided correctly. We will take further opportunities to argue our case before the Supreme Court on these issues.

We certainly think that Congress should not be considering legislation that takes those two cases even further. Our candidates for codification would be *Weeks* and *Mapp.* The interesting question to the ACLU, and other people concerned about civil liberties is, What are we left with, as fourth amendment protections after *Gates; Leon,* and *Sheppard?*

Evidence pursuant to a warrant is admissible even though police lacked, quote, "a substantial chance," quote, "that evidence of a crime would be found, so long as they had a reasonable belief that they had a substantial chance of uncovering criminal activity."

The bill would take this one step further. It would further attenuate this standard, by removing the need for an objectively reasonable belief, and relying totally on subjectivity.

Also of course the good-faith exception would apply to warrantless searches, and this is a very important point, as Professor Greenhalgh has pointed out. The classic fourth amendment theory would call for the application, by a police officer who was involved in ferreting out crime, to a neutral and detached magistrate.

We believe that the fourth amendment rule, as it stands now, relying on this objective test that *Leon* and *Sheppard* came out with, and with the weakened probable cause standard enunciated in *Gates,* allows police to search and seize in a very easy manner, that it creates standards that are not difficult to meet. If S. 237 would pass, it would allow police to search and seize based upon basically unreviewable hunches and suspicious. This would amount to a constructive repeal of the fourth amendment, and, I would direct the Senator to footnote 13 in *Leon,* which—in the majority opinion in *Leon,* which talks about subjective good faith, and says that the *Leon* case is not about subjective good faith, and, for that reason alone, clearly, S. 237 is not a codification of *Leon,* but goes substantially beyond those cases.

In conclusion, the ACLU believes that S. 237 should not be reported favorably. The Supreme Court has certainly made it easy to meet the probable cause standard, has restricted the situations where the fourth amendment applies.

In *Leon* and *Sheppard,* the Court has allowed evidence to be admitted even though that evidence was obtained in violation of the fourth amendment.

As our written statement will show, the cost of the exclusionary rule was never very high, and the benefits include better police training and more careful thought before embarking on search or seizure activities.

Thank you, Mr. Chairman.

[The statement follows:]

TESTIMONY

OF

ANTONIO J. CALIFA
LEGISLATIVE COUNSEL

THE AMERICAN CIVIL LIBERTIES UNION

ON

S.237 "EXCLUSIONARY RULE LIMITATION ACT OF 1985"

BEFORE THE SENATE JUDICIARY COMMITTEE

Exclusionary Rule

S.237 - "Exclusionary Rule

Limitation Act of 1985"

Mr. Chairman, thank you for the opportunity to submit testimony on behalf of the American Civil Liberties Union (ACLU). The ACLU is an organization with over 250,000 members committed to the defense of constitutional values and the Bill of Rights. One of the most important protections that Americans have traditionally enjoyed is the Fourth Amendment's protection against government intrusion into their privacy. The ACLU is strongly opposed to S.237. We believe the bill to be unnecessary, undesirable and unconstitutional. The Bill does not solve problems, it creates them. The ACLU strongly supports preserving the Fourth Amendment guarantees against government invasion of privacy. The Fourth Amendment of the United States Constitution, adopted in 1791 reads as follows:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

THE FOURTH AMENDMENT IS AN EXCLUSIONARY RULE

This is a fundamental and indispensible freedom. The Fourth Amendment prohibits the use of illegally obtained evidence in a criminal trial. The Fourth Amendment provides a remedy for its violation. The Supreme Court decided unanimously in Weeks v.

United States 232 U.S. 383, 58 L Ed 652 (1914) that the Fourth Amendment itself and requirements of judicial integrity require the exclusion of such evidence. The illegal search and seizure is part of a larger enterprise - the presentation of the evidence to a trial court. The Courts may not insulate themselves from the entire illegality.

From 1914 to 1984, evidence that was obtained by means which did not meet the Fourth Amendment standard was excluded. The use of the exclusionary rule can be traced clearly to Weeks v. United States. There, a United States Marshall entered defendant's house and without permission removed defendant's correspondence. The United States Marshall did not have a warrant to search. The question before the Weeks Court was whether illegally seized evidence, obtained without a warrant would be used in the subsequent trial.

The Court decided as follows:

> "If letters and private documents can ... be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his rights to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The effort of the courts and [federal] officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land. The United States Marshall could only have invaded the house of the accused when armed with a warrant issued as required by the Constitution... Instead, he acted without sanction of law, doubtless prompted by the desire to

> bring further proof to the aid of the Government, and under color of his office undertook to make a seizure of private papers in direct violation of the constitutional prohibition against such action....To sanction such proceedings would be to affirm by judicial decision a manifest neglect if not an open defiance of the prohibtions of the Constitution, intended for the protection of the people against such unauthorized action." 232 US, at 393-394, 58 L Ed 652, 34 S.Ct.341.

Since that decision, the law on search and seizure has been developing to fit different factual situations. For seventy years, the Fourth Amendment and the exclusionary rule prohibted the introduction of evidence which had been obtained in a method that violated Fourth Amendment requirements.

LEON AND SHEPPARD HAVE CREATED AN OBJECTIVE "GOOD FAITH" EXCEPTION TO THE EXCLUSIONARY RULE

In two 1984 cases, the Court narrowed the applicability of the exclusionary rule. In Leon v. United States 82 L Ed 2d 677 and Massachusetts v. Sheppard 82 L Ed 2d 737, the Court allowed evidence that had been illegally obtained to be introduced by the prosecution in its case in chief. The ACLU filed an amicus brief in these cases. It believes that the cases were decided incorrectly and will take further opportunities to argue against the continual erosion of the exclusionary rule. However, the focus of this testimony must necessarily be S.237 and not the two Supreme Court cases. Additionally, as will be seen later, the bill goes much further than do the cases in eroding Fourth Amendment protections.

In Leon, the Court was faced with a situation where a warrant was issued by an independent judicial officer, but lower

courts had ruled that the warrant should not have issued because there was no probable cause. The District Court concluded that the affadavit submitted in support of the issuance of a search warrant was insufficent to establish probable cause. Although the police officer asking for the warrant acted in good faith, the Fourth Amendment exclusionary rule required that evidence be suppressed. The Ninth Circuit affirmed, and the Supreme Court reversed.

The Supreme Court held that the exclusionary rule should not be used to bar evidence gathered by officers acting in reasonable reliance on a search warrant issued by a neutral magistrate but ultimately found to be unsupported by probable cause. In reaching this conclusion, the Court emphasized that the exclusionary rule was meant to be a deterrent measure. In situations where a police officer had in good faith obtained a search warrant from an independent magistrate, there could be no deterrent effect. There was nothing more for the police officer to do. Weighing the cost of excluding probative evidence versus the deterrent effect, the court found the evidence to be admissable where the officer had acted in good faith and there was no illegal behavior to deter.

In Massachusetts v. Sheppard, the Court went even further. The search warrant used in that case asked for permission to search for controlled substances, when the police were really interested in searching for evidence concerning a murder. Thus, the warrant was defective in misstating the items which were seized. The Court said the evidence was admissible when the

officer conducting the search acted in objectively reasonable reliance on a warrant issued by a detached and neutral magistrate that subsequently was determined to be invalid.

S.237 GOES MUCH FURTHER THAN LEON AND SHEPPARD IN LIMITING THE EXCLUSIONARY RULE AND UNDERMINING THE FOURTH AMENDMENT

S. 237 differs in crucial areas with the Supreme Court rulings discussed above. First, the bill makes evidence admissible if the search or seizure was undertaken in a reasonable good faith belief that it was in conformity with the Fourth Amendment. Second, a showing that evidence obtained pursuant to a warrant is prima facie evidence of good faith belief unless the warrant was obtained through intentional and material misrepresentation.

Let us examine the first provision of S. 237. If the officer believes he was acting in accord with the Fourth Amendment, the evidence he obtains is admissible. This is a serious infringement of the Fourth Amendment. In what other situation involving the Bill of Rights does an officer's belief that he is acting correctly excuse the violation of constitutional rights? Can the First Amendment be violated as long as the violators believe they are acting in good faith?

Clearly, most Americans would be outraged with such a result. Indeed, the Supreme Court might find fault with such an approach. Since its 1964 decision in Beck v. Ohio 379 U.S. 89, 97 (1964), the Court has rejected subjective good faith, as an excuse for violating constitutional rights.

Justice Potter Stewart has analyzed the problem as follows:

> "[I]f the ['reasonable good faith' belief proposed is a] proposal to tolerate searches and seizures where, despite the deference given to the magistrate's determination [Illinois v. Gates], a reviewing court cannot conclude that the police officer had probable cause . . . even while giving the officer the benefit of the doubt where he reasonably relied on a mistaken view of the law or the facts . . . it approaches the "subjective" good faith approach condemned by the Supreme Court . . . in Beck v. Ohio . . ."

In Leon, the Supreme Court went to great lengths to distance itself from the subjective good faith approach. In footnote 13, Justice White wrote that the arresting officer's good faith was not enough. He added that if subjective good faith were the standard the Fourth Amendment would apply only in the discretion of the police.

S. 237 adopts a subjective good faith standard. In so doing, the drafters of the bill have gone contrary to more than twenty years of rulings by the Supreme Court rejecting the subjective good faith standard. Perhaps, the most convincing evidence that subjective good faith makes S.237 constitutionally suspect is the Administration's proposal of an amendment that would include the words "objectively reasonable belief."

Congress cannot pass a statute that violates the Constitution, and should reject S. 237 on this basis alone. Because S. 237 through use of subjective good faith repudiates the probable cause standard and allows evidence to be introduced where less that probable cause was present. Such a repeal of the probable cause standard cannot be accomplished by statute, and the bill is constitutionally invalid.

Finally, and most importantly, Leon and Sheppard were cases where a police officer conducted a search pursuant to a warrant. Indeed, in both cases, the Court noted that the police officers had their warrants reviewed by police supervisors and attorneys from the District Attorney's office before presentation of the warrants to a neutral magistrate. It is classic Fourth Amendment doctrine that absent special circumstances requesting warrants is preferable to officers conducting searches without warrants. Leon and Sheppard do not create an exception for officers acting in good faith without warrants. Since S. 237 does, it clearly goes further than the Supreme Court.

S. 237 UNDERMINES THE FOURTH AMENDMENT COMMAND THAT WARRANTS BE ISSUED ONLY WHERE THERE IS PROBABLE CAUSE

The bill's second major clause provides that a showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of reasonable good faith unless the warrant was obtained through intentional and material misrepresentation. The Fourth Amendment reads:

> ". . . no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons on things to be seized."

The only explicit limit set by S. 237 is that there be no intentional and material misrepresentation. What happened to the probable cause standard? Why is this concept, with many years of federal and state judicial interpretation, being replaced by "reasonable good faith" and "intentional and material misrepresentation"? What can rebut the prima facie evidence that the officer acted in reasonable good

faith? Since intentional and material misstatements are mentioned, why wern't the other exceptions to the Leon and Sheppard rule acknowledged i.e. 1) no neutral magristrate, 2) no indica of probable cause in affadavit and 3) facially deficent unparticularized warrant? Does the bill mean that a magistrate's decision to issue a warrant will not be reviewed except where the defendant can show that the officer lied to the magistrate? And that this lie was material? Such an interpretation would make the determination of the magistrate practically unreviewable. Fourth Amendment protections would be weakened greatly. If seizure of evidence pursuant to a warrant renders such evidence admissible at trial even if the magistrate lacked probable cause such a development would effectively eliminate the requirement at the historical heart of the Fourth Amendment that "no warrants shall issue, but upon probable cause."

IN LIGHT OF GATES AND OTHER DEVELOPMENTS IN FOURTH AMENDMENT LAW S. 237 UNNECESSARY

The Fourth Amendment requires that before a warrant is issued there exists "probable cause". If law enforcement officials can persuade an independent judicial officer, usually a federal magistrate that there is probable cause, a search warrant will be issued. The applicable "probable cause" test was enunciated by the Court in Illinois v. Gates 76 L Ed 2d 527 (1983). In Gates the Court held that "the task of an issuing magistrate is simply to make a practical, common-sense decision whether, given

all the circumstances set forth in the affadavit before him there is a fair probability that contraband or evidence of a crime will be found in a particular place."

In Gates the Court redefined the concept of probable cause upon which a search warrant should issue. The Court said that probable cause is a fluid concept not readily or even usefully reduced to a neat set of legal rules. Probable cause requires only the probability and not a prima facie showing of criminal activity. The decision on probable cause calls for a practical common sense judgment.

Thus, it doesn't take much for a magistrate to issue a valid search warrant. A reviewing court will accord the magistrate's decision great weight. On review, the court will ask whether the magistrate had a "substantial basis" for believing that there was a probability or substantial chance of criminal activity. Obviously, the Gates test is much more easily met than the "two-pronged" test of Aguilar-Spinelli. S. 237 would add a good faith exception to this already minimal rule. The result would be soft indeed. As Professor Yale Kamisar has written:

> "To say that evidence obtained pursuant to a warrant should be admissible even though the police lacked a 'substantial basis' for a 'substantial chance' of criminal activity so long as they had a reasonable belief that they had a 'substantial basis' for a 'substantial chance' is almost mind-boggling."[2]

Yet, this is the standard today, after the Leon and Sheppard decision. As interpreted by its appropriate interpreter, the Supreme Court, the standard has become quite easy to comply with. For the Senate to go further is unnecessary.

A SUBJECTIVE GOOD FAITH DEFENSE REWARDS POLICE IGNORANCE AND WOULD BE DIFFICULT TO ADJUDICATE

The Supreme Court in Leon and Sheppard was careful to emphasize that they rejected a subjective good faith exception to the exclusionary rule. As has been discussed, this has been consistent constitutional doctrine since Beck v. Ohio in 1964. The Supreme Court adopted a standard of objective reasonableness. S.237 has a subjective good faith standard. The difference between these two concepts is very important.

Objective reasonableness places limits on willful ignorance. The standard is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization.

A subjective good faith defense places a premium on providing as little training as possible to police. For example, Delaware v. Prouse 440 U.S. 648 (1979) clarified the extent to which automobile searches could be executed. Under an objective reasonableness standard, police would have a powerful incentive to understand the law--because they would be expected to know the law. If, however, illegally seized evidence is admissible as long as the officer was acting in good faith, police officers would have an incentive not to know Fourth Amendment doctrine. Thus, an officer who was never informed of Delaware v. Prouse and conducted a search that violated the standard of that case could be acting in complete good faith, and have his evidence admitted.

S. 237 would impose an intolerable burden on the courts. The good faith exception it creates would become an adjudicatory horror. Each time defense counsel filed a motion to suppress, prosecutors

would counter with a good faith argument. Judges would have to probe the subjective knowledge of the searching officer. Evidence other than the officer's self-serving testimony would be scarce. As was said in Massachusetts v. Painten 389 U.S. 560 (1968) (White J., dissenting), "sending state and federal courts on an expedition into the minds of police officers would produce a grave and fruitless misallocation of judicial resource."3/

THE EXISTING EXCLUSIONARY RULE IS NOT A SERIOUS IMPEDIMENT TO FEDERAL LAW ENFORCEMENT

The "cost" of the exclusionary rule is nothing more than doing without evidence which the founders determined should never have been obtained in the first place. Studies have shown that adherence to the Fourth Amendment and use of the exclusionary rule does not result in large numbers of criminals being set free. As the leading commentator on search and seizure cases has written:

> It simply is untrue that the exclusionary rule generally imposes high costs through lost convictions. To date, the most careful and balanced assessment of all available empirical data shows "that the general level of the rule's effects on criminal prosecutions is marginal at most."
>
> "Specifically, the cumulative loss in felony cases because of prosecutor screening, police releases, and court dismissals attributable to the acquisition of evidence in violation of the fourth amendment is from 0.6% to 2.35% (from 0.3% to 0.7% if drug and weapon cases are excluded). This same study points out that the available evidence does not show that defendants gain favorable plea bargains because of the exclusionary rule.4/

One of the leading studies on costs, the GAO report, fully confirms Professor LaFave's judgment that "the 'cost' of the exclusionary rule, in terms of acquittals or

dismissed cases, is much lower than is commonly assumed."[5/] A recent independent study (funded by LEAA) showed that in five localities, declinations for all due process reasons--not just search and seizure--ranged from 1% of rejected cases in the District of Columbia, 2% in Salt Lake City, 4% in Los Angeles and 9% in New Orleans.[6/]

The conclusions of the NIJ study are both exceptionally misleading and seriously flawed. Quoting from the report's summary, NIJ claims that "4.8%, or the more than 4,000 felony cases declined for prosecution [statewide] were rejected because of search and seizure problems." Yet the relevant measure of the rule's cost is not what percent of rejected cases (86,033) were rejected for Fourth Amendment reasons, but what percent of felony complaints (520,993) were so rejected; and on that basis, the NIJ statistics show that less than 0.8% arrests made by police were declined for Fourth Amendment reasons. A devastating critique of the NIJ material can be found in the study published in American Bar Foundation Research Journal.[7/]

CONCLUSION:

Because of recent Supreme Court action in drastically reducing the application of the exclusionary rule, further reduction is unnecessary. Indeed, the weakening of the exclusionary rule contemplated by S.237 is unconstitutional and extremely undesirable. S.237 introduces the troublesome concept of subjective good faith and undermines the constitutional standard of probable cause.

The "cost" of the exclusionary rule, even before its recent and drastic weakening, was not great. For all these reasons, S.237 should not be reported out by this Committee.

Ref. 09ER004

END NOTES

1. Stewart, The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search -and- Seizure Cases 83 Colum L. Rev. 1365, 1401 (1983)

2. Choper, Jesse, Kamisar, Yale and Laurence Tribe, Vol. 5. The Supreme Court: Trends and Developments 1982-1983.

3. This discussion is more full developed in La Fave, W. "The Seductive Call of Expediency": United States v. Leon, Its Rational and Ramifications." 1984 U. Ill. L. Rev. 895, 913.

4. LaFave, ibid. citing Davies, "A Hard Look at What We Know (and Still Need to Learn) about the Costs of the Exclusionary Rule: The NIJ Study and other studies of "Lost" Arrests, 1983 Am. B. Found Research J. 611.

5. W. LaFave, Search and Seizure Section 1.2 n.9 (1981 Supp).

6. Brosi, A Cross-City Comparison of Felony Case Processing (INSLAW 1979) at 19.

7. See Footnote 4 above.

Senator BIDEN. Thank you. Mr. Califa, let me ask you to pursue the last point you made, that this legislation would in fact put in motion a subjective good faith as opposed to an objective good-faith standard.

In fact would there not be—would it not result in an objective good-faith standard because the Court would determine what constituted good faith? They would set objective standards by which to make the judgment?

They may not satisfy us; you may not like them.

On the one hand, I think that those who are pushing this legislation are just dead wrong, quite frankly, in portraying the number of cases where the implementation of the exclusionary rule has resulted in a defendant not being convicted, but who, otherwise, by societal standards should be convicted.

But it seems to me you exaggerate the case when you talk about this being a subjective good-faith standard, because will not the Court make the judgment as to whether or not there are enough objective facts to support the belief, by the officer, that he was acting in good faith?

Mr. CALIFA. Senator, I belive that a hearing concerning. suppression of evidence would start out by the police officer saying, "I really believed that something bad was going on."

Senator BIDEN. Let us just play act a little bit. I am the judge. I am going to say, "Well, what made you believe that?"

Mr. CALIFA. "I just had this suspicion. I had this hunch. I've been a police officer for 20 years, and I really think there was something going on there."

Senator BIDEN. "And I've been a judge for 47 years and I know you all lie lots of times, and I don't believe you." I mean, I just—see, I just cannot picture many judges, even the most conservative judges, sitting there and saying, when a police officer looks at him and says, "Just had a hunch, just had a feeling," that that would constitute a sufficient cause for the Court to say, "All right. Well, you had a hunch, I guess, even though you, by any objective standard, violated the fourth amendment rights of that individual, then we're going to allow that in evidence."

That is not to suggest we should pass this. I want to make sure that you all understand where I am, and I understand, as best I can, what would be the likely impact of passage of this legislation, which I oppose.

Mr. CALIFA. Yes, sir. Let me try and go at it from another direction. In cases where the issue is, was the officer acting in bad faith—torts cases—very often, the inquiry turns into the state of mind of the police officer at the time he, or she, did something. The Court——

Senator BIDEN. The burden of proof is different there, though.

Mr. CALIFA. Who knows where the burden of proof is going to be under S. 237?

Senator BIDEN. Well, will not the burden be upon the police officer, I mean, to justify that he fits within the exception? It is clearly the burden, whereas, in the tort case, the burden is on the plaintiff to prove that the police officer, in a civil case, acted in bad faith. I mean, it is really a shift of the burden.

Mr. CALIFA. Well, under S. 237, the defendant will be moving to suppress, so the burden would be on the—I guess, although it does not spell it out—the burden should be on the defendant to show that the police officer was acting in bad faith.

Senator BIDEN. Well, the way I think it would work is, the defendant moves to suppress the evidence as a violation of his fourth amendment rights, and the State comes back and says, well, on its face that is true, it is a violation, but we acted in good faith, thereby getting us out from under the requirement. Therefore, the burden is on the State to make that case, and that is in fact a—I mean, all I am trying to do here is to make sure that I am precise about what is at stake here, and what me are talking about. Were I to make your argument on the floor of the U.S. Senate, in opposition to this legislation, I think some of my competent, well-trained legal colleagues, colleagues with legal backgrounds, would be able to point out to me that I was mistaken in comparing the burden under a tort, proving bad faith on the part of an officer, and the burden of an officer having to prove good faith under this exception to the fourth—what would otherwise be—Professor, have you a comment?

Dr. GREENHALGH. You are correct. *Leon* so holds. The *Gant* case is very, very specific in its interpretation about the burden being on the prosecution.

Senator BIDEN. And I cannot imagine—I mean, we cannot legislatively alter that, at least——

Dr. GREENHALGH. Well, you can try.

Senator BIDEN [continuing]. We can attempt to. I agree, we could try, but it would not be constitutional. I do not know how you could constitutionally do it.

Dr. GREENHALGH. You see, that is the whole difficulty, you know, the attack on the warrant clause, as this legislation, at least in our judgment, is designed to go forward. You have those nine exceptions to the warrant clause, one of which now is the good-faith warrant exception to the warrant clause itself.

Senator BIDEN. Yes.

Dr. GREENHALGH. And you are trying to—I mean, other people are trying to add S. 237 to a growing——

Senator BIDEN. No; I agree. I understand that.

Dr. GREENHALGH. You are absolutely correct. I mean, *Gant* says it, interpreting *Leon,* and if you read *Leon* carefully, there is no question about it.

Senator BIDEN. Now, one of the other questions that I have and I apologize for trespassing on your time for so darn long here but——

Dr. GREENHALGH. You are just revving me up for tonight for guess what I am going to teach tonight? One of your cases. *Delaware* v. *William J. Prowse.*

Senator BIDEN. God, I am glad I am not back in law school because my mind—I would be going, geez, what is that case, what is that case?

Dr. GREENHALGH. Random stop.

Senator BIDEN. All right. Thank you. You know, it has been a long time since I felt that feeling in the pit of my stomach where, knowing I have not read the cases on the night before and briefed

them, I am going to walk into my professor's class, and I am going to be the 1 out of 120 he is going to look at and——

Dr. GREENHALGH. Several of my students have left this room in order to do just that.

Senator BIDEN. As a matter of fact, Professor, several of my colleagues and former professors have indicated to me that they believe that the best training I ever received for the job I now hold, was having to stand before the entire class, and Professor Anderson, and explain cases that I clearly had not read.

But at any rate, let me—that is off the record. My son may read the record some day.

Let me conclude by asking a couple of questions on behalf of Senator Kennedy.

Professor, have you had an opportunity to review Mr. Trott's proposed amendments to S. 237 which we only received last night?

Dr. GREENHALGH. No; I have not.

Senator BIDEN. Well, what I would like to do on behalf of Senator Kennedy and the committee is submit them to you and ask you if you would take a look at them and for the record make——

Dr. GREENHALGH. All right. We will be happy to.

[The information follows:]

American Bar Association

October 17, 1985

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Honorable Joseph R. Biden
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Thurmond and Senator Biden:

During my testimony on behalf of the American Bar Association before the Committee on October 2 concerning S. 237, exclusionary rule legislation, I was asked to provide in writing the ABA's views on amendments to S. 237 proposed by the Department of Justice. I am pleased to submit ABA comments on these amendments.

Proposed section 3508 appears to be essentially a restatement of the language in S. 237 extending the good faith warrant exception established in U.S. v. Leon, 104 S.Ct. 305 (1984) to warrantless situations. As I testified before the Committee, the ABA does not believe expansion of this narrow exception is warranted or desirable.

Expansion of the good faith warrant exception to warrantless searches would undermine the integrity of the warrant review process conducted by detached and neutral magistrates. An arrest without a warrant bypasses the safeguards provided by an objective pre-determination of probable cause -- and substitutes instead a far less reliable procedure of an after-event justification for the arrest or search.

Moreover, proposed section 3508 tracks language in S. 237 which would sweep away the four criteria established in Leon where suppression is still appropriate in warrant cases. Enacting a lesser standard for assessing objective good faith than that established by the Supreme Court in Leon is unwise and may be unconstitutional.

Proposed section 3509 is equally troubling. This section would limit the application of the exclusionary rule in non-constitutional situations. In effect, this section would overturn the U.S. Supreme Court's decisions in Mallory v. U.S., 354 U.S. 449 (1957) and Miller v. U.S., 357 U.S. 301 (1958), and their progeny, which applied the exclusionary rule in non-constitutional cases. In Mallory, the Supreme Court held that a confession obtained while the defendant was unlawfully detained in violation of Rule 5(a) of the Federal

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Rules of Criminal Procedure, which requires that a person under arrest be taken to a committing magistrate without unnecessary delay, was inadmissible. In Miller, the Court found a violation of 18 U.S.C. §3109, which deals with entry to execute a warrantless arrest, an arrest warrant and/or a search warrant, and suppressed evidence seized after the defendant's arrest. Miller also emphasized the importance of traditional fair procedural requirements:

> However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of guilty person, the history of the criminal law proves that tolerance of short-cut methods in law enforcement impairs its enduring effectiveness. The requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application. Congress, codifying a tradition embedded in Anglo-American law, has declared in §3109 the reverence of the law for the individual's right of privacy in his house.

Miller v. U.S. at 313.

It should also be noted that Title 23 §524 of the District of Columbia Code incorporates by reference §3109. Enactment of proposed section 3509 could unwittingly undercut important protections afforded by §3109. It could affect the santuary of every citizen residing in the District of Columbia.

Recent decisions indicate that the Supreme Court is attempting to tailor the exclusionary rule to those circumstances where its deterrent function will be served. Proposed section 3509, by contrast, would curtail the rule without regard to its important deterrent role.

Sincerely,

William W. Greenhalgh

William W. Greenhalgh
Former Section Chairperson

WWG:dc

cc: Members, Committee on the Judiciary

Senator BIDEN. And I would also like to ask the ACLU whether they have had an opportunity to do that. If they have not, would they also submit for the record—would you also do that for us? Apparently Mr. Trott suggested several amendments. I did not hear the beginning of his testimony, and rather than us discuss them now, it would be more useful to me and to the committee if each of you could take a look at them.

One of them is on page 7 of today's testimony, but if you do not have a copy of the testimony, we will see that you have it.

Mr. CALIFA. Senator, we would be glad to do that.

[The information follows:]

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October 24, 1985

Senator Strom Thurmond
Chairman, Judiciary Committee
SR-Senate Russell Building
Washington, D.C. 20510

Dear Senator Thurmond:

We testified on S.237 ("Exclusionary Rule Limitation Act of 1985") on October 2, 1985. During our testimony, Sen. Biden asked us to comment on two amendments proposed by Assistant Attorney General, Stephen S. Trott, Criminal Division, Department of Justice. The amendments were proposed on October 2, and we did not have an opportunity to review them prior to that date. We appreciate the opportunity to commentonthese proposed amendments.

The Justice Department's proposed amendment Sec. 3508 would make a very significant change in the bill before the committee. The proposed amendment would not exclude evidence obtained as a result of a search or seizure, if the search or seizure was undertaken in an "objectively reasonable belief" that such action was in conformity with the Fourth Amendment. S. 237, as introduced by you, would not apply the exclusionary rule to evidence obtained as a result of a search or seizure, if the search or seizure was undertaken in a "reasonable good faith belief" that it was in conformity with the Fourth Amendment.

Mr. Trott's proposed amendment attempts to correct a basic flaw in S. 237. The bill's reliance on subjective good faith makes the bill unconstitutional. The Court clearly rejected the subjective good faith standard in United States v. Leon 82 L Ed 2d 677, 693 (1984).

The Department of Justice amendment, 3508 attempts to meet the constitutional standard by excusing Fourth Amendment violations "if the search or seizure was undertaken in an objectively reasonable belief that it was in conformity with the Fourth Amendment." Proposed Sec 3508 still misses the constitutional mark. By using the term "belief", proposed Sec. 3508 uses a standard that is too subjective. Mr. Justice White wrote in United States v. Leon:

> "...[W]e also eschew inquiries into the subjective belief of law enforcement officers.... Accordingly, our good faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization."

The objective question to be answered is whether a reasonable, well-trained officer would have acted in a certain way. The officer's belief is not the appropriate inquiry under Leon. Also see Harlow v. Fitzgerald 73 L Ed 2d.396, 410-411 (1982) cited by Mr. Justice White in Leon.

In Harlow v. Fitzgerald the standard is the objective reasonableness of the officals conduct. If the officals' conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known, the offical is shielded from civil damages.

Moreover, the proposed amendment does not cure the problem of permitting warrantless searches. The long standing preference for obtaining warrants before conducting a search is undermined by proposed Sec. 3508. The proposal extends Leon and Sheppard to warrantless searches. In so doing, the proposal ignores a basic premise of the Fourth Amendment. that a detached and neutral magistrate will be better able to determine the existence of probable cause than a police officer. By allowing searches and seizures, without warrant, if an officer believes he is acting constitutionally, an important incentive for obtaining a warrant is removed.

Proposed Sec. 3508 does not contain the "four exceptions" to the Leon holding. Only one of the exceptions is mentioned. Since intentional and material misstatements are mentioned, why aren't the other exceptions acknowledged, i.e. 1) no neutral magistrate, 2) no indicia of probable cause in an affadavit and 3) a facially, deficient unparticularized warrant? Indeed, the third 'exception' is much more that that. It is a part of the Constitution. A warrant must describe with particularity the place to be searched and the persons or things to be seized.

The second Justice Department amendment, proposed Sec. 3509, makes clear that the limitation in the exclusionary rule legislation would apply to all areas not just to criminal trials. The amendment states the evidence cannot be excluded in any federal court on the ground that it was obtained in violation of a statute, rule of procedure or regulation, except as specifically provided by statute or rule of procedure.

First, this is a provision on which we have not had an opportunity to testify. We need to know the practical effect of this proposal. Which statutes, rules of procedure or regulation is the Department of Justice concerned about? The situations of which we are aware where a statute has been cited as the reason for exclusion involve violations of congressional enactments proscribing police conduct. For example, in United States v. Moreno 701 F 2d 815 (9th Cir. 1983), evidence was excluded because it had been obtained in violation of 18 U.S.C. 3109 which allows agents in executing a search warrant to break down doors or windows for entry or exit if they first knock and identify themselves. The purpose of the statute is to prevent violence. The Court in Moreno excluded evidence because officers had not complied with the statute. In United States v. Chemaly 741 F 2d 1346 (11th Cir 1984) evidence was supressed for violation of the present 31 U.S.C. 5317 (a) which calls for a search warrant based upon probable cause when treasury agents want to search suspected currency violators.

In Rea v. United States 100 L. Ed. 233 (1956) the Supreme Court considered the appropriate remedy when a federal agent obtained evidence in violation of 41(c) Fed. R. Crim. P., the equivalent of a federal statute governing issuance of search warrants. The Court excluded all evidence.

> "The obligation of the federal agent is to obey the Rules. They are drawn for innocent and guilty alike. They prescribe standards for law enforcement. They are designed to protect the privacy of the citizen unless the strict standards set for searches and seizures are satisfied. That policy is defeated if the federal agent can flout them and use the fruit of his unlawful act either in federal or state proceedings."

These cases are eminently well-reasoned and protect the privacy rights inherent in the Fourth Amendment. The Department of Justice bears a heavy burden in support of this radical measure (proposed Sec. 3509) which would repeal Fourth Amendment protections in all statutory situations, except where the statute specifically provides for exclusion. Very few of these statutes will provide specifically for exclusion. At the time of enactment, the universal remedy for an illegal search was exclusion of the evidence.

In summary, although the first Justice Department amendment is marginally better than S.237 it is still unacceptable for the reasons stated. The second Trott amendment vastly expands the bill's scope, and we strongly oppose it. Also, we reiterate our objections, enunciated in our testimony on S. 237, to any further erosion of Fourth Amendment rights.